(98-)
S. HRG. 738

SOCIAL SECURITY DISABILITY PROGRAM REFORM

HEARINGS

BEFORE THE

COMMITTEE ON THE BUDGET UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

MEMPHIS, TENN.
MARCH 16, 1984

NASHVILLE, TENN.
MARCH 16, 1984

Printed for the use of the Committee on the Budget

U.S. GOVERNMENT PRINTING OFFICE
34-198 O WASHINGTON: 1984

S251-6

COMMITTEE ON THE BUDGET

PETE V. DOMENICI, New Mexico, *Chairman*

WILLIAM L. ARMSTRONG, Colorado	LAWTON CHILES, Florida
NANCY LANDON KASSEBAUM, Kansas	ERNEST F. HOLLINGS, South Carolina
RUDY BOSCHWITZ, Minnesota	JOSEPH R. BIDEN, JR., Delaware
ORRIN G. HATCH, Utah	J. BENNETT JOHNSTON, Louisiana
JOHN TOWER, Texas	JIM SASSER, Tennessee
MARK ANDREWS, North Dakota	GARY HART, Colorado
STEVEN D. SYMMS, Idaho	HOWARD M. METZENBAUM, Ohio
CHARLES GRASSLEY, Iowa	DONALD W. RIEGLE, JR., Michigan
ROBERT W. KASTEN, Wisconsin	DANIEL PATRICK MOYNIHAN, New York
DAN QUAYLE, Indiana	J. JAMES EXON, Nebraska
SLADE GORTON, Washington	

STEPHEN BELL, *Staff Director*
RICHARD N. BRANDON, *Minority Staff Director*
W. THOMAS FOXWELL, *Director of Publications*

CONTENTS

HEARING DAYS

	Page
March 16, 1984—Memphis, Tenn.	1
March 16, 1984—Nashville, Tenn.	85

STATEMENTS BY COMMITTEE MEMBERS

Senator Sasser	31, 85

STATEMENTS

Harkness, Donna, attorney, Legal Services of Middle Tennessee, Inc.	139
Pickle, Hon. J. J., a U.S. Congressman from the State of Texas, and chairman of the Subcommittee on Social Security, Committee on Ways and Means	87

WITNESSES

Beery-Day, Jackie	92
Berryhill, Clifford	40
Bloch, Dr. Franklin, associate professor of law and director of clinical education, Vanderbilt University	133
Branch, Vivian K., accompanied by Donald A. Donati, attorney, Donati, Donati, Robbins & Gosnell	42
Brooks, Robert E., accompanied by Steven Hawks, Memphis Area Legal Services, Inc.	37
Brown, Herbert L., director, Disability Determination Section, Tennessee Department of Human Services	127
Clifton, Stewart, staff attorney, Tennessee Association of Legal Services	107
Dennis, Karen P., attorney, Memphis Area Legal Services, Inc.	53
Donati, Donald A., attorney, Donati, Donati, Robbins & Gosnell	75
Fletcher, Marlene	88
Graves, Hon. Hubert, administrative law judge, Bureau of Hearings and Appeals	70
Helton, Velma	101
Hickle, Margaret, accompanied by Pat Maynard, Legal Services of Middle Tennessee	95
Judd, Franklin C.	98
Laws, Judge Robert, administrative law judge, Nashville Office of Hearings and Appeals	123
Lee, Flora	34
McCracken, Jean, accompanied by Karen P. Dennis, attorney, Memphis Area Legal Services, Inc.	32
O'Neil, Thelma J.	103
Patton, Olivet, accompanied by Ronald Ivey, paralegal, Memphis Area Legal Services, Inc.	46
Turner, Dorothy	48
Williams, Freddy, accompanied by Karen P. Dennis, attorney, Memphis Area Legal Services, Inc.	50

SOCIAL SECURITY DISABILITY PROGRAM REFORM

FRIDAY, MARCH 16, 1984

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Memphis, Tenn.

The committee met, pursuant to notice, at 8:30 a.m., in room 800, Mid-Memphis Building, Memphis, Tenn., Hon. Jim Sasser, presiding.

Present: Senator Sasser.

Staff present: Lance Simmens, legislative assistant.

SOCIAL SECURITY DISABILITY

INTRODUCTION

The purpose of these hearings is to determine the extent to which existing Social Security Administration practices and procedures unduly work to prohibit disabled beneficiaries from collecting benefits to which they are entitled under Federal law.

These hearings are not meant to be exercises in interrogation, rather they are intended to be informational. On behalf of disabled beneficiaries not only in Tennessee, but across the country, the facts presented in these hearings today will add to the accumulation of evidence in support of the need for permanent structural reform of the Social Security Disability Insurance program.

It is my sincere hope that the testimony presented here today will also facilitate a quick and comprehensive response from Congress to address the gross inequities and injustices that have plagued the administration of this program in recent years.

BACKGROUND OF SSDI PROGRAM

The Social Security Disability Insurance Program was enacted into law more than a quarter of a century ago. The 1956 Disability Amendments established the first government program designed to provide monthly benefits to the disabled. Proponents of the measure argued that self-respecting insurance was far more preferable than humiliating relief. Particularly poignant in his defense of the program was Senator Douglas from Illinois who intoned during debate on the issue that "in addition to all the pain and sacrifice which the disabled must undergo, they must also be ground down to the bloodless pulp of destitution and forced to sacrifice virtually all savings and assets before they can receive aid." The words of Senator Douglas most truly characterized the spirit of the disability debate. The sense of compassion and commitment of fairness exhibited in those words has some-

how been crushed under the weight of current abuses of the system. It is our responsibility and duty to ensure that the commitment to fair and equitable treatment under the law is upheld It is my belief that the current Social Secuity Disability System obscures the clarity of this commitment.

CHARACTERISTICS OF THE CURRENT SSDI PROGRAM

The disability insurance program provides benefits to disabled workers and their spouses and children in amounts related to the disabled worker's former wages in covered employment. It is the Nation's primary source of income replacement for the families of workers who are unable to work due to a disabling condition. Benefits are based on the worker's average monthly earnings prior to the onset of disability, indexed to reflect national wage growth. The system is financed by the social security payroll tax on covered workers. Approximately ninety percent of the work force is covered by the system.

Under the law, disability is defined as the inability to engage in substantial activity by reason of a medically determinable physical or mental impairment expected to result in death or last at least 12 months. Generally, the worker must be unable to do any work which exists in the national economy, taking into account age, education, and work experience.

Probably the most unique characteristic of the Federal disability program is its administrative structure. Although the program is a Federal one, the administration of the program is carried out by State Disability Determination Agencies. Upon close examination of the record, it is clear that the original intention of establishing this particular administrative structure was purely to act as a transitional mechanism. In the minority views to the 1956 Finance Committee report to the disability amendments. Senator Long, George, and Douglas reinforced this concept. Writing that "in the future it may be found preferable that the determination of disability should be made by the Federal Government under its own rules and regulations. In the meanwhile, it will facilitate the beginning of the program to take advantage of the facilities and experience of the State agencies."

The concept of complete Federalization of the Disability program has been examined numerous times over the past twenty five years. Although I have a strong interest in this concept, I will withhold discussion of it at this time. I will conclude, however, by noting recent testimony before the House Ways and Means Subcommittee on Social Security by the distinguished former Secretary of Health, Education, and Welfare, the Honorable Wilbur T. Cohen. In his opening remarks he stated that "the disability program is the most complex and controversial program in the Social Security system. It is unique among all programs since it provides not only a Federal financial base, but it uses the States as administrative agencies financed 100 percent by Federal funds." He further adds that "the characteristics of the program bring with it legal, political, economic, and social problems that are very complex." The complexity of the program should not preclude serious consideration of major structural reorganization in the future.

Having alluded to the complex nature of the program I will now turn to the current problems confronting not only the disabled but also policy makers with regard to the present disability system.

1980 AMENDMENTS

Because of the rapid growth in the number of beneficiaries on the Social Security Disability rolls in the 1970's, the administrative changes were instituted in 1980. One of the changes contained in those amendments required that periodic reviews of those on the disability rolls be conducted at least once every three years. This was an effort to identify those on the rolls who were no longer eligible.

I had no quarrel with the notion of periodic review and subsequently supported the changes in the 1980 amendments. In the 1980 legislation, however, it was stipulated that these reviews, commonly known as continuing disability investigations (CDI's), would begin in January 1982. This was done ostensibly to give the State Disability Determination agencies adequate time to prepare for the large projected increase in caseload that would accompany the reviews.

1981 ACCELERATION OF CONTINUING DISABILITY REVIEWS

In March 1981, the newly elected Reagan Administration decided to accelerate the timetable for the implementation of the 1980 legislation pertaining to periodic reviews. Responding to January 1981 General Accounting Office report which estimated that as many as 20% Disability beneficiaries were actually ineligible under the current disability laws, the Administration undertook to accelerate the continuing disability reviews despite the enormous pressure this would create for the State agencies. This effectively caught the State agencies off guard and unable to handle the huge workload increases. Nationwide the Administration's decision resulted in the review of an additional 30,000 disability cases per month above the personal workload.

It must be noted that the major justification for speeding up the implementation of reviews was embedded in the desire to achieve budgetary savings in the Disability Program. While the economic efficiency of government programs is a noble and laudable objective and one which we should constantly strive for, it seems to me that it is incumbent upon Congress to ensure that the actual effectiveness of those very programs does not become obscured or lessened by the desire to realize savings. What happened in 1981 was that the government abandoned its commitment to compassion and fairness for the disabled in an all out attempt to identify those cases where individuals did not belong on the Disability rolls. Such callousness for the truly eligible goes beyond the bounds of economic or political efficiency.

If individuals do not belong on the rolls, then they should not collect benefits. The effect of the Administration's action, however, was to terminate nearly one-half million Social Security beneficiaries from the rolls between March 1981 and September 1983. What is most disturbing about this has been that a high percentage of these cases (initially it was estimated at about 70 percent) were being reinstated upon review by Administrative Law Judges. The latest statistics provided by the Congressional Research Service show that by the last half of 1983 the rate of termination resulting from continuing reviews has dropped to 40 percent, but this is still double the projected number of ineligibles identified in the 1981 GAO report.

In addition, the tremendous backlog created by the accelerated review process has created a situation where many disability beneficiaries must wait from 6 to 12 months simply to get a hearing from an Administrative Law Judge. As it now stands, beneficiaries awaiting appeal are not entitled to receive disability benefits. The situation is further compounded by the fact that between February 1982 and September 1983, Administrative Law Judges heard 152,000 appeals and reversed the earlier termination decision in 92,000 cases (61 percent).

It is against this backup that the need for congressional action to remedy problems in the Social Security Disability program was begun in 1982.

1982—ACKNOWLEDGMENT OF A PROBLEM

I first became aware of serious inequities in the disability program in January 1982 when my office received an anonymous letter from a constituent in Memphis, who alleged that as a Social Security Administration employee, he/she was forced to terminate disability recipients by means of a "quota" system. I subsequently questioned then-Secretary Schweiker before a Budget Committee hearing on the substance of the allegations and he assured me that he was unaware of the existence of a quota system.

Disturbed by the allegation, I request the General Accounting Office to conduct an investigation in Memphis to determine whether, in fact, either a formal or informal quota system was being practiced. The final report proved inconclusive on this point but did reveal certain criticisms in other States. Such criticisms included: critical comments directed at the quality of examinations being performed at the request of the State Disability Determination Agency; complaints that the consultative examinations were too short, were not comprehensive, and did not adequately cover the claimants' impairments and complaints that some consultative physicians were rude, prejudiced, and unprofessional. The report further stated that Social Security Administration employees believed the Tennessee Disability Determination agency was experiencing organizational and workload problems because of the continuing Disability investigation process. Finally, the report indicated that there was a high case backlog and some pressure to reduce it.

The report was issued on June 3, 1982 and it appeared clear to me at that point that corrective legislative remedies were in order. On June 22, I introduced S. 2659 which outlined selective temporary remedies. The temporary nature of the remedies reflected both the urgency of the problem and the political realities of the time. The temporary nature of the remedies also reflected the acknowledgement of the need for future permanent reforms.

In the present light, the reforms embodied in S. 2659 appear modest: no termination of benefits prior to the completion of the reconsideration process including an evidentiary hearing; the provision of medicare benefits through the appeals process up to the Administrative Law Judge level; and the requirement of quarterly reports by the Secretary with respect to the results of periodic reviews.

The introduction of this legislation precipitated a spate of legislative proposals aimed at lessening the traumatic impact of the disability terminations taking place. I believe that at one point there were 13 separate versions of disability reform legislation. Indeed, the difficult

problems present in Tennessee were occurring with disturbing frequency throughout the land. Endless negotiations and compromises were pursued throughout the year and finally, on the last day of the special session, temporary corrective legislation was passed by both Houses of Congress.

H.R. 7093—TEMPORARY RELIEF

It was clearly acknowledged that the passage of H.R. 7093 did not signal the end of the disability dilemma. At the time, I noted in my floor statement in support of the legislation that it must be "realized that this legislation will merely act to provide temporary relief to those facing termination of their disability benefits. It will be necessary to address major structural problems in a comprehensive manner in the near future."

H.R. 7093 was constructive in its approach. The major provisions of the legislation included:

Continuation of DI benefits for terminated beneficiaries until a decision on the appeal has been reached by an Administrative Law Judge, but not beyond June 1984 and not for terminations occurring after September 30, 1983.

Authority for the Secretary of Health and Human Services to waive, on a State-by-State basis, the statutory requirement that all non-permanently disabled beneficiaries be subject to a continuing disability review at least once every three years.

A requirement that no later than January 1, 1984 the State agencies or Social Security Administration conduct an evidentiary hearing, with an opportunity for an in-person appearance by the terminated beneficiary, as a part of the reconsideration level of appeal in all DI benefit termination cases.

A requirement that the Secretary make a semi-annual report to Congress on the number of continuing disability reviews conducted and the disposition of the cases on appeal.

Perhaps the most important provision in H.R. 7093 allowed for the continuation of benefits through the appeals process. Prior to this, disabled beneficiaries who were terminated from the rolls were not entitled to collect benefits while their cases were under appeal. The temporary nature of H.R. 7093 can be clearly seen in the stipulation that the provision would only last until September 30, 1983 and not continue past June 1984. It was evident that further action would be necessary in the upcoming 98th Congress.

1983—A YEAR OF INACTION

Despite considerable negotiation and compromise, no permanent reform of the disability system would be forthcoming in the first session of the 98th Congress. Surely this was one of the biggest disappointments of the session, at least to this Senator. The reasons for this inaction can be debated at length. The bottom line, however, is that little was accomplished in the manner of comprehensive reform.

As the expiration of the continuation of benefits in H.R. 7093 neared, it became obvious that comprehensive permanent legislation was not going to materialize that year. It therefore became necessary to attempt

to extend the continuation of benefits provisions beyond the September 30 date. I offered legislation (S. 1843) which would extend the date from September 30 to December 31. It was hoped that the interim, compromise legislation would be developed and accepted by the Senate. After discussion with the chairman of the Finance Committee, Mr. Dole, my amendment was adopted in the Senate, but in conference with the House, the extension was narrowed to 67 days. Thus, on December 7, 1983, continuation of disability benefits pending appeal expired. Persons terminated after that point were essentially out of luck as far as receiving disability benefits on appeal was concerned.

Sensing the growing political concern on the issue, the administration, on December 9, 1983, announced that they would place a temporary moratorium on sending out termination notices. However, on January 25, 1984, the administration lifted the moratorium beginning on February 1, 1984. We are now basically at the point where we were prior to passage of H.R. 7093. Once again, we will be faced with the spectre of eligible disabled beneficiaries forced to continue their appeals with little or no incomes. The time for action is long overdue, and these hearings should only serve to underscore the urgency and importance of positive corrective action.

1984—WHAT LIES AHEAD?

Representative Pickle, chairman of the House Ways and Means Subcommittee on Social Security has been actively involved in securing permanent, comprehensive reform of the disability program. In September, 1983, he was successful in having H.R. 3755 reported out of the House Ways and Means Committee. Currently this bill is ready for floor action, the legislation offered by Senators Moynihan, Pryor, and me is the companion legislation in the Senate (S. 2002).

In his opening comments, before Social Security Subcommittee hearings last June, Chairman Pickle outlined the problems and the challenges facing Congress in this area in exquisite detail. "In plain English," he stated, "the task before the committee now is to settle upon and establish a procedure of decisionmaking which will protect both the beneficiary and the program from criticism from either side of the coin."

I concur with this assessment and in November of last year introduced legislation in the Senate with two other colleagues. The Pickle legislation embodies significant, comprehensive structural reform of the disability program. It is my hope that this legislation will be considered by the Senate soon. In essence, the Pickle legislation includes the following provisions:

Permanent authority for continued benefit payments through the ALJ decision in cases where a termination of benefits for medical reasons is being appealed (this authority expired under current law on December 7, 1983);

For a temporary delay of reviews of all mental impairment disabilities until regulations stipulating new medical listings for mental impairments are published, which must be no later than April 1, 1984. This moratorium would include all cases upon which a timely appeal was pending on or after June 7, 1983, and the bill provides special procedures for any new mental impair-

ment applications denied during this period and for those with mental disabilities who had had benefits terminated after March 1, 1981.

That benefit payments be continued for those under review whose medical condition has not improved unless the individual is working at the substantial gainful activity level, the original determination was in error or obtained by fraud, the individual has benefited from advance in medical technology or vocational therapy, or new evidence (including that arising from new diagnostic techniquest) shows the impairment to be less severe than originally thought;

That in cases of multiple impairments, the combined effect of all the impairments must be considered in making disability determinations:

That a face-to-face hearing between the beneficiary and State agency disability examiners would be held in potential termination cases at the initial decision level, and that demonstration projects be held in five States on initial level face-to-face meetings for all unfavorable decisions (which include those rendered to new claimants) with a report to Congress by April 1, 1985;

That a psychiatrist or psychologist must complete the evaluations of individuals with mental disabilities in unfavorable decisions;

That all disability decisionmakers within the system (SSA and the States) are bound only by policy set out in regulations;

That SSA must apply Federal circuit court decisions uniformly in that circuit, unless they are appealed;

For more flexible reimbursement provisions to providers of vocational rehabilitation services;

For a study to be done by the National Academy of Sciences by January 1, 1985, on using subjective evidence of pain in the disability determination process; and

For the establishment of an Advisory Council on Medical Aspects of Disability.

COSTS

There has been some confusion over the costs of the provisions contained in H.R. 3755/S. 2002. While the Social Security Administration Office of the Actuary projects the cost of the bill at $6 billion over the next 5 years, official cost estimates provided by the Congressional Budget Office project 5-year costs to be closer to $1.5 billion.

Further, there is discussion over the effect passage of the bill would have on the financial status of the OASDI trust fund reserves. A staff memorandum prepared by the House Ways and Means Committee outlines these concerns in vivid detail. I will include the memorandum in the record at this point.

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, D.C., February 8, 1984.

STAFF MEMORANDUM

To: Members of Subcommittee on Social Security.
Re Cost Estimates for Disability Portion of H.R. 4170 and Impact on Trust Fund Reserves.

During the past six months the cost estimates for the disability amendments included in H.R. 4170 have been revised several times by the Social Security Administration's Office of the Actuary (OACT). These revisions have resulted from changes both in the economic assumptions and in the actuaries' interpretation of the intent and possible effects of various provisions.

These changes culminated in the most recent revision of January 13, in which the assumption is made, contrary to the explicit intent and statutory language, that the medical improvement standard would be made retroactive by the Federal courts. The new OACT estimate based on this assumption of $6 billion for the entire cost of the bill is four times the estimates made by CBO.

Moreover, the revised estimates, and the economic assumptions on which they are based, have given rise in recent OACT memos to discussions of the potential effects of the amendments on the COLA "stabilizer" which could be triggered if the trust fund reserves fall below 15%. This problem is an integral part of the issue and for many may be an issue of more importance than the cost estimate for the bill itself.

The purpose of this memo, therefore, is to provide an objective analysis of these issues, as follows:

First, the current status of trust fund reserves according to the most recent data from the President's Budget, CBO and last year's Trustees' Report;

Second, the possible impact on OASDI reserves of passage of the disability amendments, including an assessment of the likelihood that the stabiilzer COLA reduction would be triggered in the event of passage; and

Third, the differences in the estimates for the disability amendments, i.e. the original OACT and CBO estimates used for Committee's action on the bill, and the revised OACT estimates released last month, and the reasons for those differences.

OASDI TRUST FUND STATUS

Under current law, the OASDI trust funds may fall below 15%, the level necessary to trigger a COLA based on the lower of wages or prices, by January, 1985. The most recent estimates on a fiscal year basis, based on CBO's baseline economic assumptions, and on the President's Budget assumptions, show reserves above 20 percent throughout the period. However, under the 1983 Amendments, estimates of trust fund reserves for determining whether the stabilizer is triggered must be made on a calendar year basis.

Tables 1, 2 and 3 contain the administration's estimates for the disability legislation by calendar year; the current status of the trust funds for purposes of determining the operation of the stabilizer can be seen in Table 3, in the middle columns headed "OASDI 'stabilizer' ratios". Under current law, based on the 1983 Trustees' Report assumptions as revised in November, 1983, the OASDI reserve level is projected to fall from 15.9 percent at the beginning of 1984 to 14.6 percent at the beginning of 1985, and then would begin to increase, to 16.9 percent in 1986, and to 31.6 percent by 1989.

IMPACT OF THE DISABILITY BILL

According to Table 3, passage of the disability bill would reduce the January, 1985 ratio by 0.2 percent from 14.6% to 14.4% (This estimate assumes prospective application of the medical improvement standard—see below for the staff's analysis of OACT's assumptions concerning retroactive application of this provision under court orders.) Therefore, under either present law or enactment of the disability bill, OASDI reserves could fall below the 15 percent level in January, 1985, which could result in triggering the stabilizer.

However, all sets of economic assumptions currently in use—the CBO baseline, the President's Budget, and the 1983 II–B assumptions revised in November—show wage increases outpacing price increases for 1984 and 1985, so that no change in the COLA would be made even if the ratio drops below 15%. The only year in which reserves appear to be low enough to raise the possibility is 1985, after which trust fund reserves increase to over 20% by 1988.

These ratios are based on trust fund assets *without* the amounts of loans from the HI trust fund included, as required by the law for determining whether the stabilizer is to be triggered. Under the calculations used to determine repayment of loans to the HI fund (the third column on Table 3, "OASDI 'repayment' ratios"), the OASDI funds remain above the necessary 15% level throughout the period, even assuming passage of the DI amendments. Therefore, repayment of the HI loans would continue but at a slower rate than under current law if the disability bill were enacted.

It should also be noted that under the system of advance tax transfers enacted in the 1983 Amendments, the trust funds receive on the first of each month all the revenue it is estimated will be collected during that month. This procedure therefore operates as a secondary "fail-safe" mechanism to insure benefit payments as long as the amount transferred on the first of the month equals or exceeds that month's benefits, generally 8 percent of the year's outlays. Under any of the assumptions currently being used, the OASDI reserves remain well above that level, and do not fall below 13 percent at any point, even assuming retroactive application of the medical improvement standard in the disability bill.

In summary, passage of the disability amendments in 1984 could result in a reduction of OASDI reserves below the 15 percent stabilizer "trigger" level at the beginning of 1985, but only if that level is already within 0.2 percentage points of 15 percent under current law. However, even if the reserve level falls below 15 percent, it appears unlikely that the COLA would be affected, because wages are expected to exceed prices through the critical period of 1984–85. Finally, if reserves do fall below 15 percent, and the stabilizer is not triggered, benefit payments still appear to be in no danger, with or without passage of the disability bill, as the reserves fall below 14 percent only for a short period before beginning to climb again in the latter part of 1985.

These estimates of reserves do not include the actual amounts still in the OASDI trust funds as a result of loans from the HI fund, and all estimates assume continued repayment of the loans to HI, although at a slower rate if the disability amendments are enacted. Estimates also assume repayment of the loan made by the DI fund to the OASDI fund earlier than assumed under present law (1985 instead of 1989).

ESTIMATES FOR DISABILITY AMENDMENTS

The staff has received since June, 1983, several different cost estimates on the disability amendments from the administration, varying according to the prevailing interpretation of various sections of the bill, and to revisions in economic assumptions. Therefore, none of these estimates is directly comparable to the estimates contained in Tables 1, 2 and 3 (dated January 13, 1984) which take into account the impact of current State-initiated moratoria on CDI terminations. (These tables contain only the OASDI costs associated with the bill; the $6 billion cost used in the Commissioner's testimony before the Senate Finance Committee on January 25 includes administrative, Medicare, Medicaid and SSI costs, and is detailed on Table 7.)

Tables 4 and 5 contain the estimates on which full Committee mark-up of the disability amendments was generally based, although the final estimates of Table 4 (dated October 20) reflect staff clarification of certain provisions in the committee report, which resulted in a slightly lower benefit outlay estimate than had been assumed in commitee mark-up. Table 5 shows the trust fund reserve estimates as of September 19, 1983, on which full Committee action was predicated; the governing assumptions were repayment of the loan to the DI fund in 1986, and an "intermediate" effect of revision of the mental impairment listings. It should be noted that at that time OACT had not yet included the cost of revising the listings in the DI fund balance baseline estimate (given the Secretary's initiative in this area), as it has now done.

Under these assumptions, at the time of commitee action, OACT did not estimate that the stabilizer would be triggered under either current law or enactment of disability legislation.

The critical differences between the fall, 1983 estimates, and the January, 1984 estimates appear to be in three areas:

(1) Changes in the baseline condition of the OASDI reserves, which worsened somewhat because of lower income to the funds than projected in the 1983 Trustees' Report, and which were lowered further (for the DI fund) to take account of the Administration's DI initiatives;

(2) An as-yet unexplained increase of about $600 million, over five years, in the estimate for the medical improvement provision (prospectively applied), which was not completely offset by an equally unexplained decrease of $230 million in the estimate for payment of benefits through the ALJ level; and

(3) A new estimate in the January table for application of the medical improvement standard retroactively, based on the assumption that the Federal courts would order the Secretary to re-open and apply the bill's medical improvement standard to closed cases, for a total of $1,880 billion in new costs over the five years.

DISCUSSION OF REVISED ASSUMPTIONS

The basis for the first two changes is not entirely clear, but the changes may simply reflect refinement of the estimates. However, serious questions have been raised about the third change, which assume almost $2 billion in increased costs based on the possible actions of Federal courts. It appears, from discussions with the actuaries, that there are two bases for this estimate: first, the effective date and legislative history of the medical improvement standard could be interpreted to allow retroactive implementation of the standard; and second, the actuaries feel that the Federal courts would find it inequitable to allow a medical improvement standard to apply only to cases currently being litigated or still open at the administrative appeal level.

Examination of the language itself does not reveal substantial ambiguity to the staff: the provision was explicity intended to apply on a current and prospective basis only. Further clarification is certainly possible, if deemed necessary. For example, an affirmative statement could be made in the bill that no closed cases are to be re-opened under this legislation, in order to leave the Federal courts in no doubt as to the intent of the provision. The staff is exploring such an option, which could be included in the technical revisions now being considered for H.R. 4170.

The second point appears to be more a matter of conjecture, given that the Federal courts frequently apply far-reaching decisions on a prospective or "in the pipeline" basis (The Miranda decision concerning 5th and 6th amendment rights is one example.) It seems equally likely that in the absence of legislation, the Federal circuit courts will continue to impose a more liberal medical improvement standard than the one contained in the bill, possibly in the context of a nationwide class action suit, which several disability advocates have been discussing. Without any legislative effective date to serve as a limit, the courts might be very inclined in this context to order past cases to be redetermined under a court-ordered standard.

It is also possible that the Supreme Court could decide the medical improvement issue one way or the other, since one circuit has now ruled in favor of SSA's position on terminations without medical improvement, thereby conflicting with the several circuits that have established medical improvement standards. It is of course impossible to predict how or when the court would rule at this point.

In light of the uncertainty attached to all these possibilities, it does not seem appropriate to attribute the additional $1.9 billion in costs either to current law in light of possible Federal court action, or to the bill as it stands. This would be particularly true if technical changes were made to clarify the prospective nature of the effective date in the bill.

CBO ESTIMATES

The official cost estimates used for H.R. 4170 were provided by the Congressional Budget Office in October 1983 (Table 6). The DI benefit costs were estimated at just over $1 billion over the five-year period, in contrast with the OACT estimate at that time of $2.070 billion over the same period, and their current estimate of $2.5 billion for prospective medical improvement, and $4.7 billion for retroactive medical improvement. CBO's estimate for the total costs for the bill, including OASDI benefit, administrative, Medicare, Medicaid and SSI costs, are shown in Table 7. Tables 8 and 9 show the equivalent OACT estimates from fall, 1983 and January 1984 respectively.

The CBO estimates are now being revised to take account of changes in their baseline assumptions, but CBO staff do not expect major changes in the total estimate at this time. The major reasons for the differences between CBO and OACT estimates last fall were because SSA assumed that a larger number of CDI's would be done each year, and that the number of appeals to the ALJ level would increase greatly.

Table 1.--Estimated additional OASDI benefit payments under H.R. 4170 as reported by the Committee on Ways and Means

(In millions)

Section	Proposal (including bill report requirements)	Fiscal year 1984	1985	1986	1987	1988	Total, 1984-88
901	Medical improvement:						
	Applied to new cases 1/	$30	$380	$470	$500	$540	$1,920
	Applied to prior terminations 2/	440	790	260	210	180	1,880
	Subtotal	470	1,170	730	710	720	3,800
902	Study concerning evaluation of pain	--	--	--	--	--	--
903	Guidelines for disability determinations:						
	Multiple impairments	(3/)	(3/)	10	10	20	40
	Noncompetitive work	(3/)	(3/)	(3/)	(3/)	10	10
911	Moratorium and revised criteria for mental impairment cases	(4/)	(4/)	(4/)	(4/)	(4/)	(4/)
912	Face-to-face evidentiary hearing for CDR reviews	--	(3/)	10	20	30	60
913	Continuation of benefits through ALJ hearing	60	130	130	150	170	640
914	Qualifications of certain medical professionals	(3/)	(3/)	10	20	20	50
915	Regulatory standards for consultative exams	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
921	Uniform standards for disability determinations	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
922	Compliance with certain court orders	(5/)	(5/)	(5/)	(5/)	(5/)	(5/)
923	Revision to vocational rehabilitation reimbursement rules	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
924	Advisory Council and trial work	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
925	Staff attorneys	--	--	--	--	--	--
(6/)	Work evaluation in mental impairment cases	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
Total before ending current State moratoria on CDR terminations:							
-- With section 901 applied to new cases only		70	470	580	650	730	2,500
-- With section 901 applied to new cases and prior terminations 7/		840	1,280	840	860	910	4,730
Effect of ending current State moratoria on CDR terminations		-10	-80	(3/)	--	--	-90
Total after ending current State moratoria on CDR terminations:							
With section 901 applied to new cases only		60	390	580	650	730	2,410
-- With section 901 applied to new cases and prior terminations		830	1,200	840	860	910	4,640

1/ Includes effect of applying medical improvement standard to all cases that will be pending a final decision of the Secretary as of the assumed enactment date of April 1, 1984.

2/ Estimates assume that past CDR terminations would be reopened and evaluated under the new medical improvement standard and that reinstated beneficiaries would receive retroactive benefits from the month of termination. See covering memorandum for a discussion of this issue.

3/ Cost or savings less than $5 million.

4/ No cost is shown for this provision since existing Administration initiatives are expected to accomplish the same results under present law. The financial effects of the initiatives are described in a memorandum by Richard S. Foster dated August 1, 1983.

5/ This provision has the potential to affect benefit costs substantially, although such effects cannot be estimated since they would depend on unpredictable court cases and the subsequent actions of the court. As an example, if future court cases were to repeat past decisions concerning the evaluation of pain, additional benefits of over $1 billion could occur during 1984-88 as a result of this section.

6/ This item is contained in the committee report only, and is not associated with a particular section of the bill.

7/ Includes $360 million due to continuation of benefits during appeal for past CDR terminations which are reopened and evaluated under the new medical improvement standard but are not reinstated.

Notes: 1. Due to the uncertainty concerning the effects of many of these proposals, actual experience could vary substantially from these estimates.

2. Estimates shown for each section alone (1) are based on the assumption that current State-initiated moratoria on CDR terminations would gradually phase out over the next 2-3 years, and (2) exclude the effects of interaction with other proposals. Total costs for bill reflect such interactions.

3. Estimates are based on the 1983 Trustees Report alternative II-B assumptions as revised in November 1983.

Social Security Administration
Office of the Actuary
January 13, 1984

Table 2.--Estimated assets of the OASI and DI Trust Funds at beginning of year, expressed as a percentage of expenditures during year, under present law and under H.R. 4170 as reported by the Committee on Ways and Means

	Calendar year						
	1983	1984	1985	1986	1987	1988	1989
Disability Insurance Trust Fund:							
Present law, as shown in the 1983 Trustees Report	15%	38%	32%	29%	28%	30%	38%
Present law, revised for recent economic and program experience (including effects of Administration DI initiatives) 1/	15	34	26	20	17	16	21
H.R. 4170, including ending of current State moratoria on CDR terminations and repayment of loans by OASI in 1989:							
-- With section 901 applied to new cases only	15	33	24	16	9	4	6
-- With section 901 applied to new cases and prior terminations	15	31	17	6	-2	-7	-7
H.R. 4170, including ending of current State moratoria on CDR terminations and repayment of loans by OASI in 1985:							
-- With section 901 applied to new cases only	15	33	24	39	31	25	24
-- With section 901 applied to new cases and prior terminations	15	31	17	30	20	13	11
Old-Age and Survivors Insurance Trust Fund 2/:							
Present law, as shown in the 1983 Trustees Report	15	20	20	22	23	23	28
Present law, revised for recent economic and program experience (including effects of Administration DI initiatives) 1/	14	19	20	23	25	26	33
Present law, revised for recent economic and program experience (including effects of Administration DI initiatives) 1/, but with repayment of DI loans in 1985 (instead of 1989)	14	19	20	20	23	24	31
Old-Age and Survivors and Disability Insurance Trust Funds, combined:							
Present law, as shown in the 1983 Trustees Report	15	22	21	23	23	24	29
Present law, revised for recent economic and program experience (including effects of Administration DI initiatives) 1/	14	21	21	23	24	25	32
H.R. 4170, including ending of current State moratoria on CDR terminations:							
-- With section 901 applied to new cases only	14	21	21	22	24	25	30
-- With section 901 applied to new cases and prior terminations	14	21	20	21	23	24	29

1/ See covering memorandum and November 16, 1983 memorandum by Richard S. Foster for details.
2/ Estimates are shown only for present law, since H.R. 4170 would have only a very minor effect on OASI benefits.

Notes: 1. Estimates shown above for the effects of H.R. 4170 are based on the 1983 Trustees Report alternative II-B assumptions as revised in November 1983.
2. Under these assumptions, the benefit increase "stabilizer" does not take effect during the projection period. See covering memorandum and table 3 for further discussion of this issue.

Social Security Administration
Office of the Actuary
January 13, 1984

Table 3.--Estimated OASDI "trust fund ratios" under present law and under H.R. 4170 as reported by the Committee on Ways and Means, calendar years 1983-89

Calendar year	OASDI "contingency" reserve ratios 1/ under --			OASDI "stabilizer" ratios 2/ under --			OASDI "repayment" ratios 3/ under --		
		H.R. 4170 with section 901 applied to --			H.R. 4170 with section 901 applied to --			H.R. 4170 with section 901 applied to --	
	Present law	new cases only	new cases and prior terminations	Present law	new cases only	new cases and prior terminations	Present law	new cases only	new cases and prior terminations
1983	14.5%	14.5%	14.5%	---	---	---	13.8%	13.8%	13.7%
1984	20.7	20.7	20.5	15.9%	15.7%	15.0%	13.7	13.6	12.9
1985	20.9	20.7	20.0	14.6	14.4	13.8	15.5	15.1	14.2
1986	22.7	22.3	21.3	16.9	16.5	15.5	17.0	16.6	15.7
1987	24.2	23.8	22.8	19.3	18.5	17.5	17.5	17.1	16.9
1988	25.1	24.7	24.4	22.4	21.3	20.1	23.9	22.4	21.1
1989	31.6	30.0	28.8	31.6	30.0	28.8	33.9	32.0	30.6

1/ Assets at beginning of year (including outstanding balance of any loans from HI and advance tax transfer for January) as a percent of outgo during year. This is the normal definition of trust fund ratio as used to evaluate the financial condition of a trust fund. See table 2, for example.

2/ For 1985 and later, equals assets at beginning of year (excluding outstanding balance of any loans from HI but including advance tax transfer for January) as a percent of outgo during year. For 1984, the asset figure used is as of the end of 1984. If this ratio for any year falls below 15 percent (20 percent after 1988), the automatic benefit increase effective for December of that year is based on the lower of the annual wage index increase or third quarter CPI increase.

3/ Assets at beginning of year (including outstanding balance of any loans from HI but excluding advance tax transfer for January) as a percentage of outgo during year. Assets in excess of 15 percent of outgo must be used to repay any outstanding HI loans.

Notes: 1. The above estimates are based on the 1983 Trustees Report alternative II-B assumptions as revised in November 1983.

2. For more details on trust fund ratio definitions, refer to sections 112, 141, and 142 of Public Law 98-21.

Social Security Administration
Office of the Actuary
January 13, 1984

Table 4

Estimated additional DASDI benefit payments under H.R. 3755, as approved by the Committee on Ways and Means, including effect of October 19 draft committee report

(In millions)

ection	Proposal (including bill report requirements)	Fiscal year 1984	1985	1986	1987	1988	Total, 1984-88
101	Medical improvement 1/	$130	$280	$290	$310	$330	$1,340
102	Study concerning evaluation of pain	--	--	--	--	--	--
103	Guidelines for disability determinations:						
	Multiple impairments	(2/)	(2/)	10	10	20	40
	Noncompetitive work	(2/)	(2/)	(2/)	(2/)	10	10
201	Moratorium and revised criteria for mental impairment cases	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
202	Face-to-face evidentiary hearing for CDI reviews	--	(2/)	10	10	10	30
203	Continuation of benefits through ALJ hearing	110	160	180	200	220	870
204	Qualifications of certain medical professionals	(2/)	10	10	20	20	60
205	Regulatory standards for consultative exams	(2/)	(2/)	(2/)	(2/)	(2/)	(2/)
301	Uniform standards for disability determinations	(2/)	(2/)	(2/)	(2/)	(2/)	(2/)
302	Compliance with certain court orders	(4/)	(4/)	(4/)	(4/)	(4/)	(4/)
303	Revision to vocational rehabilitation reimbursement rules	(2/)	(2/)	(2/)	(2/)	(2/)	(2/)
304	Advisory Council and trial work	(2/)	(2/)	(2/)	(2/)	(2/)	(2/)
305	Staff attorneys	--	--	--	--	--	--
(5/)	Work evaluation in mental impairment cases	(2/)	(2/)	(2/)	(2/)	(2/)	(2/)
otal for bill		210	400	440	480	540	2,070

/ See accompanying memorandum concerning effect of draft committee report language on these estimates.

/ Less than $5 million.

/ No cost is shown for this provision since existing Administration initiatives are expected to accomplish the same results under present law. The financial effects of the initiatives are described in a memorandum by Richard S. Foster dated August 1, 1983.

/ This provision has the potential to affect benefit costs substantially, although such effects cannot be estimated since they would depend on unpredictable court cases and the subsequent actions of the court. As an example, if future court cases were to repeat past decisions concerning the evaluation of pain, additional benefits of over $1 billion could occur during 1984-88 as a result of this section.

/ This item is contained in the committee report only, and is not associated with a particular section of the bill.

otes: 1. Due to the uncertainty concerning the effects of many of these proposals, actual experience could vary substantially from these estimates.

2. Estimates shown for each proposal generally exclude the effects of interaction with other proposals. Total costs for bill reflect such interactions.

3. Estimates are based on the alternative II-B assumptions of the 1983 Trustees Report.

Social Security Administration
Office of the Actuary
October 20, 1983

Table 5—Estimated assets of the OASI and DI Trust Funds at beginning of year, as a percentage of expenditures during year, under H.R. 3755 as approved by the Social Security Subcommittee, including revised bill report language

	Calendar year						
	1983	1984	1985	1986	1987	1988	1989
Disability Insurance Trust Fund:							
Present law, as shown in 1983 Trustees Report	15%	38%	32%	29%	28%	30%	29%
Present law, adjusted to reflect administrative changes and initiatives not included in Trustees Report, assuming following illustrative effects of revised mental impairment criteria and repayment of loans by OASI in 1989 1/:							
-- Minor effect	15	38	32	28	26	26	33
-- Intermediate effect	15	38	31	25	22	20	25
-- Major effect	15	37	29	22	16	11	13
H.R. 3755, assuming following illustrative effects of revised mental impairment criteria and repayment of loans by OASI in 1989 1/:							
- Minor effect	15	37	30	23	19	16	19
Intermediate effect	15	37	29	21	15	10	12
- Major effect	15	37	27	17	9	2	1
H.R. 3755, assuming following illustrative effects of revised mental impairment criteria and repayment of loans by OASI in 1986: 1/							
- Minor effect	15	37	30	23	42	38	41
- Intermediate effect	15	37	29	21	38	32	32
- Major effect	15	37	27	17	31	23	21
Old-Age and Survivors Insurance Trust Fund 2/:							
Present law, as shown in 1983 Trustees Report	15	20	20	22	23	23	28
Present law, but with repayment of DI loans in 1986 (instead of 1989)	15	20	20	22	21	21	26

1/ See memoranda dated September 12 and August 1 by Richard S. Foster for further explanation of possible effects of revised criteria.
Estimates are shown only for present law, since H.R. 3755 would have only a very minor effect on OASI benefits.

Note: 1. Projections for proposed bill include the estimated additional administrative expenses attributable to the bill.
2. The estimates shown above are based on the alternative II-B assumptions of the 1983 Trustees Report.

Social Security Administration
Office of the Actuary
September 19, 1983

PROVISIONS IN H.R. 3755 (By fiscal year, in millions of dollars)

Section and Number	1984	1985	1986	1987	1988
Termination of Benefits Based on Medical Improvement (Section 101)					
DI	26	65	90	115	115
HI and SMI	4	20	25	35	35
Medicaid	1	2	3	3	3
SSI	1	2	3	3	3
Multiple Impairments (Section 103)					
DI	1	4	7	11	13
HI and SMI	a/	a/	a/	1	2
Face-to-Face Evidentiary Hearings for Reviews (Section 202)					
DI	0	11	11	8	6
Continued Payment During Appeal (Section 203)					
DI	100	160	115	100	90
HI and SMI	35	60	50	40	35
Medical Personnel Qualifications (Section 204)					
DI	2	7	14	23	25
HI and SMI	a/	a/	1	2	5
Medicaid	a/	a/	1	2	3
SSI	1	2	3	5	6
Vocational Rehabilitation (Section 303)					
DI	a/	2	4	7	8
HI and SMI	a/	a/	a/	a/	a/
SSI	a/	a/	a/	a/	a/
Compliance with Court Orders (Section 304)	b/	b/	b/	b/	b/
Total Outlays c/	155	302	295	321	315

a/ Less than $500,000.

b/ The costs of this provision cannot be estimated because they depend on future court decisions.

c/ The details do not add to the totals due to interaction between provisions.

Table 7

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

1. BILL NUMBER: H.R. 3755.

2. BILL TITLE:

Social Security Disability Benefits Reform Act of 1983.

3. BILL STATUS:

As ordered reported by the House Ways and Means Committee on September 27, 1983.

4. BILL PURPOSE:

To amend Title II of the Social Security Act to provide for reform of the disability determination process.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

The following table shows the estimated costs of this bill to the federal government. These estimates assume an enactment date of November 15, 1983.

TABLE 1. ESTIMATED BUDGETORY EFFECTS OF H.R. 3755 (By fiscal year, in millions of dollars)

Budget Function	1984	1985	1986	1987	1988	'84-'88
Function 550*						
Budget Authority	1	2	4	5	6	- 18
Estimated Outlays	1	2	4	5	6	- 18
Function 570						
Budget Authority	10	18	14	9	-1	- 50
Estimated Outlays	34	72	68	70	70	- 314
Function 600*						
Budget Authority	2	4	6	8	9	- 29
Estimated Outlays	2	4	6	8	9	- 29
Function 650						
Budget Authority	-5	-23	-42	-55	-71	- [illegible]
Estimated Outlays	118	224	217	238	230	- [illegible]
Total Costs or Savings						
Budget Authority	8	1	-18	-33	-57	- 99
Estimated Outlays	155	302	295	321	315	- [illegible]

*Funding for entitlements that requires further appropriations action.

Table 8

Estimated Cost Effect of H.R. 3755 as Approved on September 27 by the House Committee on Ways and Means, Fiscal Years 1984-88

(In millions)

Program affected	Fiscal year 1984	1985	1986	1987	1988	Total, 1984-88
OASDI benefit payments	$210	$400	$440	$480	$540	$2,070
OASDI administrative expenses	28	99	125	121	126	499
Medicare	50	105	145	175	205	680
Medicaid	7	13	18	23	28	89
SSI	2	9	14	18	24	68
Total	297	626	742	817	923	3,406

Notes: 1. These estimates reflect the effects of the October 14 draft of the committee report.

2. These estimates are based on the alternative II-B assumptions of the 1983 Trustees Reports.

Social Security Administration
Office of the Actuary
October 20, 1983

Table 9

Prospective Medical Improvement Standard

(In millions)

Program affected	Fiscal Year 1984	1985	1986	1987	1988	Total 1984-88
OASDI benefit payments	$ 60	$390	$580	$650	$730	$2,410
OASDI administrative payments	25	105	130	126	131	517
Medicare	25	45	65	80	95	310
Medicaid	13	21	21	15	20	90
SSI	+3	2	9	19	23	50
Total	120	563	805	890	999	3377

Retroactive Medical Standard

(In millions)

Program affected	Fiscal year 1984	1985	1986	1987	1988	Total 1984-88
OASDI benefit payments	$ 830	$1200	$ 840	$ 860	$ 910	$4640
OASDI administrative payments	109	168	130	126	131	664
Medicare	45	95	135	165	195	635
Medicaid	19	31	33	30	40	153
SSI	8	15	16	25	29	93
Total	1011	1509	1154	1206	1305	6185

Social Security Administration
Office of the Actuary
January, 1984

1984—THE REACTIONS BY THE STATES

As the disability problem has worsened, the need to act independent of the Social Security Administration has been increasingly more evident to many States. For some time now, the House Select Committee on Aging has been compiling an up-to-date compilation of major State actions and court decisions.

The most recent listing shows that to date, 38 States have taken either State actions or been mandated by Federal Court decisions to take action different from Social Security Administration guidelines. The list includes:

UPDATE OF MAJOR STATE ACTIONS AND FEDERAL COURT DECISIONS AFFECTING THE DISABILITY REVIEW PROCESS, FEBRUARY 24, 1984

Alabama: The moratorium on terminations ordered by Governor George Wallace on September 19 continues. Discussions have been held between SSA and the state, but no cessations have been processed.

Alaska: Retroactive reinstatement of benefits ordered by the Ninth Circuit Court of Appeals on February 22, 1984 pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Court Justice Rehnquist's October 11, 1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

Arizona: Retroactive reinstatement of benefits ordered by the Ninth Circuit Court of Appeals on February 22, 1984, pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Couprt Justice Rehnquist's October 11, 1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

Arkansas: The moratorium on terminations ordered by Governor Bill Clinton on December 5 could be lifted if a medical improvement standard satisfactory to the state and to SSA can be developed. Disability employees would still be required to follow procedures of a July 14 Executive Order which requires re-reviews of cases terminated since January 1983, under guidelines consistent with the Eighth Circuit Court of Appeals decisions. A joint committee of the state legislature is conducting hearings and investigations. Governor Clinton testified in Washington, D.C. before the House Aging Committee on June 20 and led successful effort in early August for a National Governors Association resolution in support of specific legislative remedies.

California: Retroactive reinstatement of benefits ordered by the Ninth Circuit Court of Appeals on February 22, 1984 pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Court Justice Rehnquist's October 11, 1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

Colorado: A December 1983 court order requires use of a medical improvement standard and the reopening of all termination decisions since December 1980. A moratorium on terminations was implemented by the state following the preliminary court decision in August. On February 1, 1984 SSA instructed the DDS to continue to hold cessation notices pending instructions to implement the court order.

Delaware: On February 1, 1984 SSA instructed the DDS to continue to hold all cessation notices pending a decision in its appeal of Third Circuit court order requiring use of a medical improvement standard.

Hawaii: Retroactive reinstatement of benefits ordered by the Ninth Circuit Court of Appeals on February 22, 1984, pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Court Justice Rehnquist's October 11, 1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

Idaho: A moratorium on terminations imposed by Governor John Evans on February 10, 1984. The Governor notified Secretary Heckler that the moratorium would remain in effect until "Congress has registered its intent regarding this

matter". Retroactive reinstatement of benefits ordered by the Ninth Circuit Court of Appeals on February 22, 1984, pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Court Justice Rehnquist's October 11, 1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

Illinois: In a February 15, 1984, letter to Secretary Heckler, Governor James Thompson reaffirmed the moratorium on terminations he had ordered on December 23. He also asked Secretary Heckler to allow his state not to process cessations pending litigation decision on a medical improvement standard. Re-opening and reinstatement of previously terminated mentally impaired persons was ordered by Federal District Court in December 1982 and June 1983 respectively. Court orders require SSA to develop disability guidelines for mentally impaired which are consistent with legal requirements.

Indiana: Re-opening and reinstatement of previously terminated mentally impaired persons was ordered by Federal District Court in December 1982 and June 1983 respectively. Court orders require SSA to develop disability guidelines for mentally impaired which are consistent with legal requirements.

Kansas: Disability employees required to follow procedures approved by Governor John Carlin in February, 1983 to rereview cases terminated since 1981 and to implement state interpretation of the federal disability guidelines. SSA has informed Kansas that it will review 100 percent of all cardiovascular cases processed under the state guidelines. Governor Carlin submitted testimony to House Aging Committee hearing on June 20.

Maine: The moratorium on terminations ordered by Governor Joseph Brennan on October 16 continues. The Committee on State Government of the Maine legislature recommended that the DDS use a medical improvement standard similar to the one developed by Massachusetts. SSA is negotiating with state officials to resume processing cases.

Maryland: The moratorium on terminations ordered by School Superintendent David Hornbeck on October 4 continues. On December 20, 1985, a District Court judge ordered SSA to apply a medical improvement standard in all future continuing disability reviews. SSA has told the DDS to hold all cessations pending implementation of the court order.

Massachusetts: The moratorium on terminations ordered by Governor Michael Dukakis on December 5 continues. A previous (March 1983) Executive Order implemented a District Court decision (Miranda) to require that a medical improvement standard be used prior to terminating benefits. On July 20 the Governor ordered a reopening of previously terminated cases and joined in a lawsuit against SSA's disability policies. SSA has not complied with the Governor's request that the case folders of previously terminated beneficiaries be returned for readjudication. The state legislature's special commission on disability issued its final report with recommendations in June. Governor Dukakis testified at House Aging Committee hearing in Congressman Barney Frank's district on May 31.

Michigan: The moratorium on terminations ordered by Governor James Blanchard on November 17 continues. On November 30, the state requested retrieval of case folders to reopen the decisions on previously terminated beneficiaries. In December, SSA denied this request and refused to provide any listing of terminated beneficiaries. In January discussions with state officials, SSA suggested that if the state continues its moratorium, SSA might begin processing Michigan cases at the SSA regional office, divert Michigan's CDI workload to another state, or begin the federalization of the disability determination agency in Michigan. Reopening and reinstatement of previously terminated mentally impaired persons was ordered by Federal District Court in December 1982 and June 1983 respectively. Court orders require SSA to develop disability guidelines for mentally impaired which are consistent with legal requirements. The state of Michigan Interagency Taskforce on Disability has issued five lengthy, analytical reports since March 1982.

Minnesota: Re-opening and reinstatement of previously terminated mentally impaired persons was ordered by Federal District Court in December 1982 and June 1983 respectively. Court orders require SSA to develop disability guidelines for mentally impaired which are consistent with legal requirements.

Montana: Retroactive reinstatement of benefits ordered by the Ninth Circuit Court of Appeals on February 22, 1984, pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Court Justice Rehnquist's October 11,

1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

Nevada: Retroactive reinstatement of benefits ordered by the Ninth Circuit Court of Appeals on February 22, 1984, pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Court Justice Rehnquist's October 11, 1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

New Jersey: The moratorium on terminations ordered by Secretary of Labor Michael Boakr in late September based on the legal advice of Attorney General Irwin Kimmelman continues. On February 1, SSA instructed the DDS to hold all cessations pending the outcome of its current appeal of a court ordered medical improvement standard. This instruction followed the January 24th decision of the HHS General Counsel to agree with Attorney General Kimmelman that the state is bound by the court order in Kuzmin vs. Schweiker.

New Mexico: The moratorium on terminations ordered by Governor Toney Anaya on October 21 was lifted on February 10 when the DDS began the fact-to-face reconsideration process. Governor Anaya has submitted a letter for the Aging Committee hearing on February 28 urging passage of a medical improvement standard.

New York: The moratorium on terminations ordered by Social Services Commissioner Cesar Perales on July 22 continues. The state has submitted a medical improvement standard to SSA for its approval. The DDS has developed its own guidelines for cardiovascular cases, and SSA may be reviewing 100 percent of all cases processed under the state developed guidelines. On December 11, a Federal judge in New York City ordered the reinstatement of 62,000 previously terminated beneficiaries with mental impairments. Attorney General Robert Abrams has also filed suit against the Department of HHS on behalf of individuals with heart diseases (August 10).

North Carolina: The moratorium on terminations ordered by Governor James Hunt on September 3 continues. A February 14, 1984, District Court order (Hyatt vs. Heckler) requires SSA to reopen the decisions on all persons whose benefits were terminated or denied since march 1981. In reassessing these and all future North Carolina cases, the courts require use of a medical improvement standard and the consideration of pain. The state legislature's special commission to examine the disability process convened in September and continues its public hearings. Governor Hunt submitted testimony to House Aging Committee hearing on June 20..

Ohio: The six month moratorium on terminations ordered by Governor Richard Celeste on October 8 continues. Re-opening and reinstatement of previously terminated mentally impaired persons was ordered by Federal District Court in December 1982 and June 1983 respectively. Court orders require SSA to develop disability guidelines for mentally impaired which are consistent with legal requirements.

Oklahoma: First to implement face-to-face interviews at reconsideration following the Director of the Department of Human Services (and former U.S. Senator) Henry Bellmon's recommendation in early 1983 that Governor George Nigh turn back the state disability determination function to the Federal government.

Oregon: Retroactive reinstatement of benefits ordered by the Ninth Circuit Court of Appeals on February 22, 1984, pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Court Justice Rehnquist's October 11, 1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

Pennsylvania: The moratorium on terminations ordered by Governor Richard Thornburgh on October 6 continues. In February, SSA instructed DDS to continue to hold all cessations pending its possible appeal of a medical improvement standard ordered in Kuzmin vs. Schweiker.

South Carolina: In February, SSA instructed the DDS to hold cessations pending legislation currently awaiting action in the State Senate. The bill, approved in January by the State House, directs the DDS to follow the medical improvement standards imposed by the court order in North Carolina, and expires when appropriate legislation is enacted by the United States Congress.

Texas: On February 17, Governor Mark White, in testimony before a joint hearing of the House Ways and Means Committee, Subcommittee on Social Security and the Senate Special Committee on Aging, announced that he might decide

to ask the DDS to refrain from sending out termination notices to the 800 beneficiaries who had been protected under Secretary Heckler's temporary moratorium.

Virginia: The moratorium on terminations ordered by Governor Charles Robb on September 28 continues. SSA instructed the state to continue to hold all cessations pending appeal of a court ordered medical improvement standard. House Aging Committee held hearing in Cong. Norman Sisisky's district on September 12.

Washington: Retroactive reinstatement of benfits ordered by the Ninth Circuit Court of Appeals on February 22, 1984, pending re-opening of previous terminations under a medical improvement standard handed down by the District Court on June 16, 1983. The order lifts Supreme Court Justice Rehnquist's October 11, 1983 stay on the reinstatement of benefits. Current cases are being processed under the court-ordered medical improvement standard.

West Virginia: The moratorium on terminations ordered by Governor John Rockefeller on August 12 continues. SSA is under court order to apply a medical improvement standard and to identify terminated beneficiaries. The DDS is holding all cessations pending the identification of class members of a court suit. Governor Rockefeller testified at a House Aging Committee hearing in Congressman Bob Wise's district on May 20.

Wisconsin: Re-opening and reinstatement of previously terminated mentally impaired persons ordered by Federal District Court in December 1982 and June 1983 respectively. Court orders require SSA to develop disability guidelines for mentally impaired which are consistent with legal requirements.

Prepared for: Chairman Edward Roybal by the staff of the Subcommittee on Retirement Income and Employment, House Select Committee on Aging.

Further, twenty-three states have either adopted or advocated use of a medical improvement standard in determining disability. Of these, nine States have publicly announced their decision to either develop or follow a medical improvement standard. Fourteen other States have been ordered by a District or Circuit Court of Appeals to follow a medical improvement standard. The following illustrates these actions:

TWENTY-THREE STATES USE OR ADVOCATE A MEDICAL IMPROVEMENT STANDARD

From the beginning of the disability program until 1976, SSA used a medical improvement standard. Under that standard, benefits could only be terminated by showing that the beneficiary's medical condition had improved.

In 1976, SSA unilaterally dropped this requirement but it was not until August of 1980 that regulations were published. These regulations allow the Secretary to terminate benefits "if the medical or other evidence shows that (the claimant is) not disabled, or if there is not enough evidence to support a finding that disability continues." (20 CFRS 404.15990). SSA currently interprets this regulation to mean that the burden of proof is shifted to the beneficiary to demonstrate that disability still exists.

The courts have consistently ruled that a medical improvement standard must be used prior to terminating benefits, but SSA has often refused to follow these rulings or appeal them to the Supreme Court.

Nine states have publicly announced their decision to either develop or follow a medical improvement standard or support its use.

Fourteen other states have been ordered by a District or Circuit Court of Appeals to follow a medical improvement standard.

Alabama: Considering use of a state developed medical improvement standard.

Alaska: On February 22, the Ninth Circuit Court of Appeals (Lopez vs. Heckler) ordered the use of a medical improvement standard retroactive to March 1981.

Arizona: On February 22, the Ninth Circuit Court of Appeals (Lopez vs. Heckler) ordered the use of a medical improvement standard retroactive to March 1981.

Arkansas: In consultation with SSA, state is developing a medical improvement standard.

California: On February 22, the Ninth Circuit Court of Appeals (Lopez vs. Heckler) ordered the use of a medical improvement standard retroactive to March 1981.

Colorado: On December 15, a U.S. District Court (Trujillo vs. Heckler) ordered use of a medical improvement standard retroactive to December 1, 1980.

Delaware: The Third Circuit Court of Appeals (Kuzmin vs. Schweiker) ordered the use of a medical improvement standard.

Hawaii: On February 22, the Ninth Circuit Court of Appeals (Lopez vs. Heckler) ordered the use of a medical improvement standard retroactive to March 1981.

Maine: The Legislature's Committee on State Government recommended the use of a medical improvement standard similar to the one used by Massachusetts.

Idaho: Governor John Evans, on Feb. 10, imposed unilateral moratorium.

Massachusetts: On March 8, 1983 Governor Dukakis ordered the implementation of a state developed medical improvement standard consistent with a First Circuit Court of Appeals decision (Miranda).

Maryland: On December 20, a District Court (Doe and Seawright vs. Heckler) ordered SSA to apply a medical improvement standard on all future reviews, including those pending in the appeals process.

Montana: On February 22, the Ninth Circuit Court of Appeals (Lopez vs. Heckler) ordered the use of a medical improvement standard retroactive to March 1981.

Nevada: On February 22, the Ninth Circuit Court of Appeals (Lopez vs. Heckler) ordered the use of a medical improvement standard retroactive to March 1981.

New Jersey: Third Circuit Court of Appeals (Kuzmin vs. Schweiker) ordered a medical improvement standard.

New Mexico: Governor Anaya supports the medical improvement standard in H.R. 3755.

New York: State officials have developed a medical improvement standard, which has not yet been approved by SSA.

North Carolina: Fourth Circuit Court of Appeals (Dotson vs. Schweiker) ordered the use of a medical improvement standard for Mr. Dotson. On February 14, a District Court (Hyatt vs. Heckler) ordered that the Dotson medical improvement standard be applied to all North Carolinian beneficiaries terminated since March 1981.

Oregon: On February 22, the Ninth Circuit Court of Appeals (Lopez vs. Heckler) ordered the use of a medical improvement standard retroactive to March 1981.

Pennsylvania: Third Circuit Court of Appeals (Kuzmin vs. Schweiker) ordered the application of a medical improvement standard.

South Carolina: A bill pending in the Senate (approved in January by the House) requires the state to follow the Fourth Circuit Court of Appeals (Dotson vs. Schweiker).

West Virginia: On August 12, Governor Rockefeller ordered state employees to apply standards consistent with Federal court decisions. A District Court (Graham, Simpson, and Peggues vs. Heckler) ordered the application of a medical improvement standard for current and previously terminated cases.

Washington: A 1983 District Court decision (Morrison, Doe and Decker vs. Secretary of HHS) requires SSA to use a medical improvement standard for current and previously terminated cases. On February 22, the Ninth Circuit Court of Appeals (Lopez vs. Heckler) ordered the application of a medical improvement standard for all terminated cases since March 1981.

Prepared for: Chairman Edward R. Roybal by the staff of the Subcommittee on Retirement Income and Employment, House Select Committee on Aging.

What is perhaps most disturbing about these developments, however, is the Secretary's response to individual governors. In essence, the House Aging Committee has identified four different responses. The documentation of this assertion is presented as follows:

HHS Letters to Governors Reinstating Disability Reviews

On December 7th, the Social Security Administration imposed a temporary halt by the states on sending termination notices to beneficiaries.

Secretary Heckler of Health and Human Services sent letters on January 24 to all governors asking them to resume processing of continuing disability reviews, and to initiate the face to face reconsideration process. However, the

governors did not receive identical letters due to the fact that they or the Federal courts had stopped or significantly altered the disability reviews in their states.

Letter #1, states with self-imposed moratoria: Requests that governors notify the Regional Social Security Commissioner of the states' "plans to resume processing of medical cessation cases within two weeks". The following eight states received this letter: Alabama, Illinois, Massachusetts, New York, Arkansas, Maine, Michigan, and Ohio.

Letter #2, states in third and fourth federal circuit: Requests the governors to process cases but to hold any termination decisions due to pending litigation decisions on the medical improvement issue. The following six states received this letter: New Jersey, South Carolina, Virginia, North Carolina, Pennsylvania, and Delaware.

Letter #3, states under court injunction: Requests that governors process cases in accordance with court imposed standards. The following states received this letter: Washington, Montana, Maryland, Oregon, Hawaii, Colorado, Nevada, Idaho, Arizona, Alaska, California, and West Virginia.

Letter #4, states which were processing cessations: Requests governors to resume processing cases. The following 24 states received this letter, along with the District of Columbia and Puerto Rico: Vermont, Connecticut, Florida, Kansas, Kentucky, Louisiana, Rhode Island, Utah, Tennessee, Wyoming, Oklahoma, Missouri, Minnesota, Mississippi, North Dakota, South Dakota, Texas, New Mexico, Nebraska, New Hampshire, Georgia, Indiana, Iowa, and Wisconsin.

Prepared by: Lowell Arye, House Select Committee on Aging, Subcommittee on Retirement Income and Employment, Edward R. Roybal, Chairman.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, D.C., January 24, 1984.

HON. GEORGE C. WALLACE,
Governor of Alabama,
Montgomery, Ala.

DEAR GOVERNOR WALLACE: The long-standing arrangement which this Department and your State have had in administering the social security disability programs has, I believe, made clear to both parties that the disability program is very important to the American public. Each year $17,588,000,000 in benefits are paid nationally with $364,000,000 going to beneficiaries in your State. Alabama plays a key role in this program by making disability determinations, employing 307 people with an annual budget of $16,519,758.

We value our association with the States because, over time, it has been an excellent example of a positive Federal-State relationship. As in any relationship, each party has specific roles and responsibilities. The Federal Government's main responsibility is to set policy that provides for uniform and equitable treatment of disability claimants and beneficiaries nationwide. The State's responsibility is to carry out that policy for its citizens.

In December the Social Security Administration advised your State to hold notices to persons whose disability had been determined to have ceased. This was done because the authority to continue payment to those persons pending appeal of their decision expired on December 7 and Congress was considering an extension of that authority. Also, the face-to-face reconsideration process was scheduled to begin on January 1, and we wanted to be assured of a fair and consistent notice of this opportunity for all beneficiaries. Now that we have reached agreement on our plans for the face-to-face reconsideration hearing, I believe we can resume our full-processing of this program in a way assuring fair and humane treatment for our citizens. In addition, I reiterate my support for legislative proposals calling for continued payment through the face-to-face procedure and will continue to strongly support this action.

The Social Security Administration will provide your State with instructions to resume full and complete processing and notification of disability cessations beginning in February with the added dimension of the face-to-face reconsideration process.

You should notify the Regional Commissioner of the Social Security Administration of your plans to resume processing of these cases within the next two weeks. I have directed the Social Security Administration to work with you to ensure a smooth resumption of this process along with the start-up of the face-to-face reconsideration at the State level.

Sincerely,

MARGARET M. HECKLER,
Secretary.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, D.C., January 24, 1984.

HON. PIERRE S. DU PONT IV,
Governor of Delaware,
Dover, Del.

DEAR GOVERNOR DU PONT: I would like to thank you and your State disability agency for your efforts in processing disability cases under the social security and supplemental security income programs. The importance of these programs is clear when one realizes that each year $17,588,000,000 in benefits are paid out nationally with $50,000,000 going to beneficiaries in your State. Delaware plays a key role in this program by making disability determinations, employing 37 people with an annual budget of $1,895,901.

As you may know, a few States have instituted self-imposed moratoriums on the processing of continuing diability cases. I have written to these States notifying them that they are to resume full-processing beginning in February.

There are several key points that I emphasized in that letter which I want to restate for you personally. We value our association with the States because, over time, it has been an excellent example of a positive Federal-State relationship. As in any relationship, each party has roles and responsibilities. The Federal Government's main responsibility is to set policy that provides for uniform and equitable treatment of disability claimants and beneficiaries nationwide. The State's responsibility is to carry out that policy for its citizens. (In the Federal Judicial Circuit of which your State is a part, there is pending medical improvement litigation that may have a bearing on the standard to be used in deciding whether disability continues.)

In December the Social Security Administration advised all State to temporarily hold notices to persons whose disability had been determined to have ceased. This was done because the authority to continue payment to those persons pending appeal of their decision expired on December 7 and Congress was considering an extension of that authority. Also, the face-to-face reconsideration process was scheduled to begin on January 1, and we wanted to be assured of a fair and consistent notice of this opportunity for all beneficiaries. Now that we have reached agreement on our plans for the face-to-face reconsideration hearing, I believe we can resume our full-processing of this program, being confident of fair and humane treatment for our citizens. In addition, I reiterate my support for legislative proposals calling for continued payment through the face-to-face procedure and will continue to strongly support this action.

The Social Security Administration will provide most States with instructions to resume processing and notification of disability cessations beginning in February with the added dimension of the face-to-face reconsideration process. However, because of the pending litigation referred to above, the Social Security Administration will be instructing your State to continue to hold all medical cessations pending further consideration of the litigation issues.

We stand ready to continue to work with you in the equitable and compassionate administration of the disability program.

Sincerely,

MARGARET M. HECKLER,
Secretary.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, D.C., January 24, 1984.

HON. BILL SHEFFIELD,
Governor of Alaska,
Juneau, Alaska.

DEAR GOVERNOR SHEFFIELD: I would like to thank you and your State disability agency for your efforts in processing disability cases under the Social Security and supplemental security income programs. The importance of these programs is clear when one realizes that each year $17,588,000,000 in benefits are paid out nationally with $12 000,000 going to beneficiaries in your State. Alaska plays a key role in this program by making disability determinations, employing 19 people with an annual budget of $1,716,744.

As you may know, a few States have instituted self-imposed moratoriums on the processing of continuing disability cases. I have written to these States notifying them that they are to resume full-processing beginning in February.

There are several key points that I emphasized in that letter which I want to restate for you personally. We value our association with the States because, over time, it has been an excellent example of a positive Federal-State relationship. As in any relationship, each party has roles and responsibilities. The Federal Government's main responsibility is to set policy that provides for uniform and equitable treatment of disability claimants and beneficiaries nationwide. The State's responsibility is to carry out that policy for its citizens. In your State at this time there is a court order relating to the standard for deciding whether disability continues. Thus, processing of these cases in your State is performed under court imposed standards.

In December the Social Security Administration advised all States to temporarily hold notices to persons whose disability had been determined to have ceased. This was done because the authority to continue payment to those persons pending appeal of their decision expired on December 7 and Congress was considering an extension of that authority. Also, the face-to-face reconsideration process was scheduled to begin on January 1, and we wanted to be assured of a fair and consistent notice of this opportunity for all beneficiaries. Now that we have reached agreement on our plans for the face-to-face reconsideration hearing, I believe we can resume our full-processing of this program being confident of fair and humane treatment for our citizens. In addition, I reiterate my support for legislative proposals calling for continue payment through the face-to-face procedure and will continue to strongly support this action.

The Social Security Administration will provide your State with instructions to resume processing and notification of disability cessations beginning in February in accordance with court imposed standards with the added dimension of the face-to-face reconsideration process.

We stand ready to continue to work with you in the equitable and compassionate administration of the disability programs.

Sincerely,

MARGARET M. HECKLER,
Secretary.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, D.C., January 24, 1984.

Hon. WILLIAM A. O'NEILL,
Governor of Connecticut,
Hartford, Conn.

DEAR GOVERNOR O'NEILL: I would like to thank you and your State disability agency for your efforts in processing disability cases under the social security and supplemental security income programs. The importance of these programs is clear when one realizes that each year $17,588,000,000 in benefits are paid out nationally with $191,000,000 going to beneficiaries in your State. Connecticut plays a key role in this program by making disability determinations, employing 125 people with an annual budget of $8,224,288.

As you may know, a few States have instituted self-imposed moratoriums on the processing of continuing disability cases. I have written to these States notifying them that they are to resume full-processing beginning in February.

There are several key points that I emphasized in my letter to these non-processing States which I want to restate for you personally. We value our association with the States because, over time, it has been an excellent example of a positive Federal-State relationship. As in any relationship, each party has roles and responsibilities. The Federal Government's main responsibility is to set policy that provides for uniform and equitable treatment of disability claimants and beneficiaries nationwide. The State's responsibility is to carry out that policy for its citizens.

In December the Social Security Administration advised all States to temporarily hold notices to persons whose disability had been determined to have ceased. This was done because the authority to continue payment to those persons pending appeal of their decision expired on December 7 and Congress was considering an extension of that authority. Also, the face-to-face reconsideration process was scheduled to begin on January 1, and we wanted to be assured of a fair and consistent notice of this opportunity for all beneficiaries. Now that we have reached agreement on our plans for the face-to-face reconsideration hearing, I believe we can resume our full-processing of this program

being confident of fair and humane treatment for our citizens. In addition, I reiterate my support for legislative proposals calling for continued payment through the face-to-face procedure and will continue to strongly support this action.

Recently, all States have been holding cessations at the request of the Social Security Administration. As I explained above, I am now asking that you resume processing such cases. The Social Security Administration will provide your State with instructions to resume processing and notification of disability cessations beginning in February with the added dimension of the face-to-face reconsideration process.

We stand ready to continue to work with you in the equitable and compassionate administration of the disability program.

Sincerely,

MARGARET M. HECKLER,
Secretary.

It seems quite apparent, from the foregoing analysis, that depending upon which State a disability beneficiary resides in, treatment under existing disability law will differ and at the very least remain uncertain. Such a situation should not be allowed to exist. To quote Chairman Pickle, we must "have a procedure which assures uniformity, which is as immune as possible from outside pressures and informal directives, and in which the claimant can feel he or she has been fairly and adequately dealt with."

At present, the disability system is itself disabled and in need of major repair. The legislation proposed in H.R. 3755 and S. 2002 would go a long way toward alleviating the current dysfunctions in the system. It is my hope that these hearings will shed further light and direction on the problem, and will help to focus on effective remedies for this grave and serious problem.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., June 3, 1982.

Subject: Results of Investigation Into Alleged Quotas Being Used by the Social Security Administration to Terminate Disability Insurance Beenfits (GAO/HRD–82–88).

Hon. JIM SASSER,
U.S. Senate.

DEAR SENATOR SASSER: In accordance with your April 29, 1982, request, we visited the Social Security Administration (SSA) District Office in Memphis, Tennessee, to investigate an anonymous allegation that quotas were used to terminate the benefits of disability insurance recipients. The allegation, purportedly from a District Office employee, claimed that employees were being pressured to meet quotas in terminating disability benefits under SSA's continuing disability investigation (CDI) program.

We visited the main District Office in downtown Memphis and its three branch offices. We talked to the District Manager, his assistants, the three branch chiefs, nine claims representatives, three service representatives, and three data review technicians. Included in this group were the local employee union's president and two union stewards. We also met with Mr. Gay Moskowitz, a representative from your office in Memphis.

The primary purpose of our visit to Memphis was to locate the anonymous source of the allegation and determine its validity. We also wanted to obtain from the District Office employees their perspective on the CDI program, its impact on their workload, and the nature of any beneficiary complaints. In addition to using private rooms to interview the various employees, we had a telephone line available after normal working hours to encourage employees to contact us (see the enclosed letter we distributed to SSA employees in Memphis). The individual who made the allegation failed to identify himself or herself.

We concluded that the allegation regarding a specific quota for terminations was groundless at the Memphis District Office. We base this conclusion on the following.

1. The District Office employees are not directly involved in making CDI decisions. Their only involvement is to support the State Disability Determination Services (DDS) by helping locate beneficiaries, answering claimants' questions, helping set up consultative examinations, and performing other support functions.

2. For initial disability claims, the District Office accepts applications and makes earnings determinations, but does no medical development or evaluation.

3. Even though most employees we talked to had criticisms of the CDI program, they seemed to understand the philosophy behind CDIs, the constraints the State operates under, and the reasons why people were terminated. No one indicated to us that they knew of quotas imposed on anyone at either the District Office or the State.

4. As several employees were rather outspoken in their criticism of management, we believe it is unlikely that management could have prevented their telling us of situations involving quotas. The after-hours telephone number, known to all SSA employees in Memphis, also provided ample opportunity for SSA employees to contact us anonymously with information or opinions regarding quotas.

Employees voiced many criticisms regarding the recent CDI initiatives, the disability program in general, and other Social Security matters. These criticisms often paralleled those heard in other States we have visited regarding CDI issues, which leads us to believe that the program in Tennessee, and its problems, are not unlike those found in Ohio, New York, Pennsylvania, and California. As you may know, we submitted testimony on these problems on May 25, 1982, to the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs. A copy of our testimony is being provided to you.

Most of the critical comments from the employees were directed at the quality of consultative examinations being performed at the request of the State DDS. The District Office has historically received many complaints that consultative examinations were too short, were not comprehensive, and did not adequately cover the claimants' impairments. The District Office has also heard complaints that some consultative physicians are rude, prejudiced (racially and programmatically), and unprofessional. Opinions differed as to how well the DDS monitors the consultative physicians, but generally, the employees said that, because of a shortage of available physicians to do examinations, the DDS had to continue with the physicians used.

Most employees said there was a need for CDIs, but thought the program could be improved. Suggestions included:

More selective screening of those reviewed;

A need to show medical improvement as justification for termination;

Gradually declining benefits so terminated beneficiaries can be "eased off" their dependency on disability insurance income; and

"Grandfathering" all those currently on the rolls or, alternatively, only those of an advanced age or with certain impairments.

The employees also believed the Tennessee DDS is experiencing organizational and workload problems because of the current CDI program. Several said that there had been high turnover among examiners and some morale problems and that the State had not been able to hire enough new staff. They said there was a high case backlog and some pressure to reduce it.

On a more positive side, many employees said that, although some errors had been made, the State was doing a reasonably adequate job with the CDI program. The criticisms generally related to the procedures governing the CDI reviews, which were developed by SSA.

Many complaints have been received from beneficiaries about the CDI program, and filings for reconsiderations and appeals have increased. However, the types of complaints are apparently not much different from those received before the current CDI initiatives began in March 1981. SSA employees have a great felling of empathy for terminated beneficiaries, who are often confused about the circumstances and fearful for their economic future.

We did not visit the DDS in Nashville, Tennessee, to pursue the allegation further because we did not believe such a trip would have been any more productive than our visits to other States where we found no evidence of "quotas." The administrator of the Tennessee DDS testified on May 25, 1982, before the previously named Subcommittee. In his testimony, he confirmed the workload

and other staffing problems described by the District office employees. He also addressed the issue of "quotas":

"* * * With all the emphasis we and SSA have and are now placing on processing time, there has never been so much as a hint to sacrifice quality.

"Neither in my 25 years in this program has there ever been a quota established or implied for allowances, denials, continuances, or cessations. Adjudicative climates may have changed, but never a hint of a quota."

We found no evidence of a quota system for CDIs (in Tennessee or anywhere else), and we were not contacted by the anonymous individual who made the allegation. It is possible that the individual misinterpreted SSA "goals," or projected savings, as quotas because a 20-percent termination rate, as referred to in the allegation, initially surfaced in an internal SSA study. This termination rate was later referred to in our March 1981 report [1] on CDIs and was also publicized by the media. It is possible that some employees had varying interpretations of this termination rate, but we found no evidence that it was intended to be used as, or was interpreted as being, a direct quota.

We trust the above information is responsive to your request. As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report for 30 days. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

GREGORY J. AHART,
Director.

Enclosure.

[Enclosure I]

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., May 7, 1982.

All SOCIAL SECURITY EMPLOYEES,
Memphis, Tenn., Area.

At the request of Senator Jim Sasser, the U.S. General Accounting Office (GAO) is reviewing various aspects of the Social Security Administration's disability investigations. These investigations are currently being conducted by the various State Disability Determination Services (DDSs) throughout the country. Senator Sasser and GAO are very concerned about the impact of these investigations on the disabled population, and specifically with the manner in which they are being conducted.

GAO representatives—Bruce Fairbairn and Russell Keeler—will be in Memphis, Tennessee on May 10–13, 1982, to discuss the issues with district office employees. While we have recently met with DDS examiners in several States, we have not visited district offices to obtain first-hand the views of SSA personnel who often meet face-to-face with the disabled population.

Recognizing that some employees may be reluctant to share their views in person for various reasons, GAO wants to assure every employee that his or her view will be kept confidential and their identity protected. To help in this regard, we have made arrangements to have a private meeting room available between the hours of 1:00 and 4:00 p.m. on May 12, 1982, to receive your views. The room is located at the North Branch Office (Interview Room) and we encourage every employee who has information they wish to share to talk with us.

If further anonymity is desired, GAO representatives can be reached by telephone on 332–1130 (X322) between the hours of 6:00–7:00 p.m. on May 10, 11, and 12.

We recognize that some employees may have specific allegations to report while others have more general views concerning these disability investigations. We welcome your views and appreciate your cooperation.

Sincerely,

PETER J. MCGOUGH,
Associate Director.

NOTE.—This letter was distributed at one of the branch offices. Similar letters were distributed at the other offices.

---

[1] "More Diligent Followup Needed To Weed Out Ineligible SSA Disability Beneficiaries" (HRD–81–48, Mar. 3, 1981).

OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. These hearings this morning are being held under the auspices of the Budget Committee of the U.S. Senate. And let me open these hearings first by welcoming all of those who are concerned about the very troublesome problems which have developed over the past several years in the social security disability program.

I want to also extend my appreciation to the witnesses who have come here to offer testimony this morning on this very critical issue. The testimony that we are receiving this morning in Memphis, and this afternoon in Nashville, will hopefully shed further light on the problems confronting both the disability process and the disabled beneficiary.

The testimony presented here today will contribute to the stockpile of evidence already gathered from experiences around the country, and will aid those in Congress, in our fight to correct the injustices and inequities that have been well-documented over the past 3 years.

The purposes of these hearings are twofold: No. 1, to inform the public of the problem; No. 2, to explore specific remedies to alleviate the problems.

Now, let me say that I have taken a very active interest in problems confronting the disability program for some time. In fact, in 1982 I first became aware of the problem through a letter that I received from a constituent right here in Memphis, Tenn.

REFORM LEGISLATION HAS BEEN INTRODUCED

Now, we have had temporary legislation to deal with the problem that we pushed through Congress in 1982. But we have introduced permanent and comprehensive reform legislation, and we are here today to deal with that legislation.

Clearly, the urgent need for comprehensive legislation, and in particular, I would draw attention to the remedies contained in the bill offered by myself and Senator Pryor of Arkansas, and Senator Moynihan of New York is at this very moment being discussed and debated in the House of Representatives.

Thus, these hearings and the evidence we will gather here is going to be very timely.

Now, the basis of my concern is the fact that since March 1981 thousands of disabled beneficiaries, right here in Tennessee, and literally hundreds of thousands disabled beneficiaries across the United States have been indiscriminately kicked off the disability rolls.

The question we might ask is, why has this situation deteriorated so rapidly, and attracted so much attention since March of 1981? At that time the newly elected administration chose to accelerate the implementation of periodic reviews of social security disability cases, some 9 months ahead of schedule. This meant that these periodic reviews began to take place at a time when the State agencies that determine disabilities all across the country were ill-prepared, were caught off guard, in many cases were simply not staffed adequately to handle the review process.

What has resulted from this policy decision has been, in essence, an institutionalized disregard for the rights and the dignity of eligible

disabled Americans, all in the name of budgetary savings. Such action can only be characterized as unnecessarily cruel punishment.

If there are individuals who are on the disability rolls and receiving benefits who do not deserve them, then, of course, they should not be on the disability rolls. And, of course, they should be taken off. But to institute a program and a process which purges this disability roll, simply in an effort to make the numbers look better, or to trim the rolls, is unfair to make the numbers look better, or to trim the rolls, is unfair to those who by right, find themselves in the unenviable position of being unable to provide for themselves.

Now, the fight for Federal disability insurance for disabled working people has been a fight that has gone on for many, many years, and was successfully fought and won over 25 years ago, a quarter of a century ago, in a Congress of the United States. And over the years, the Government's commitment to that deal has been strengthened.

STATUTORY COMMITMENTS CANNOT BE RENEGED ON

If we can improve upon the efficiency of the operation of the program, then we should do so. If we can improve on the effectiveness of the program, then we should do so. But we simply cannot renege on our statutory commitments in law to fundamental ideals which touch upon fairness and equity, all in the name of trying to save some money.

I will not get into the details of the legislation which I propose, and which is pending before the Congress now, because we are operating under fairly severe time constraints, but I would look forward to hearing from our witnesses today, and hope that we can all work together in resolving the serious problems that face the disability system.

Our first witness today will be Ms. Jean McCracken.

Ms. McCracken, would you come forward, please?

Ms. McCracken, for the purpose of the record, would you identify yourself, please, and the person accompanying you?

STATEMENT OF JEAN McCRACKEN, ACCOMPANIED BY KAREN P. DENNIS, ATTORNEY, MEMPHIS AREA LEGAL SERVICES, INC.

Ms. McCracken. Jean McCracken and Karen Dennis.

Senator Sasser. Who is Ms. Dennis?

Ms. McCracken. A legal aide.

Ms. Dennis. I am her attorney.

Senator Sasser. Would you state your age, please?

Ms. McCracken. Fifty-two.

Senator Sasser. Would you please explain the extent of your disability?

EXTENT OF DISABILITY

Ms. McCracken. Well, I have had five operations for disc removal, two of them at one time, in 1973. One in 1978, in the back, and 1979, and this last time he had to make room so I could walk. And it resulted in cutting the nerves in my knee, where I cannot stand up without a brace.

Then I had one disc out in the neck, in 1973. I have had a lot of chest trouble. I have bronchitis, and left with a lot of allergies.

Senator SASSER. Have you ever been examined by a social security doctor?

Ms. MCCRACKEN. Yes.

Senator SASSER. Do you feel that this doctor was familiar with your medical complaints, and with your problems?

Ms. MCCRACKEN. No.

Senator SASSER. Now, you have been terminated from the social security disability system, is that correct?

Ms. MCCRACKEN. Yes; that is correct.

Senator SASSER. And your payments for disability have ceased?

Ms. MCCRACKEN. No; I am still drawing them.

Senator SASSER. But you have been terminated. You are in the appeal process now, right?

Ms. MCCRACKEN. Twice, three times, yes, sir.

Senator SASSER. Now, have you continued to receive benefits while your termination was being appealed?

Ms. MCCRACKEN. Yes.

MEDICAL CONDITION NOT IMPROVED

Senator SASSER. Has your medical condition improved since you first started collecting the disability benefits?

Ms. MCCRACKEN. No; it has not.

Senator SASSER. Would you state for the record your present condition? Do you feel that you are in a great deal of pain at the moment, and if so, would you amplify on that, and explain?

Ms. MCCRACKEN. Yes, I am. I am in great pain most of the time. And this morning I did not take any pain pills, because I had to drive.

Senator SASSER. Do you require medication for your disability?

Ms. MCCRACKEN. Yes; constantly, 24 hours a day.

Senator SASSER. Will you describe what type of medication you take?

Ms. MCCRACKEN. Do you want the names of the medication?

Senator SASSER. Yes; please, if you can recall.

Ms. MCCRACKEN. I take Dilantin, 200 for pain; Elavil 50 for pain; Darvocet-N 100 for pain; Tylenol Three with Codeine, Tegretol 200 for pain; Fiorinal for pain; and Darvon-65 for pain. I take a fluid pill because I cannot keep the fluid off my legs. And did you want how many times I take them a day?

Senator SASSER. No; that is enough.

How much would you estimate you spend on medication over a 30-day period?

Ms. MCCRACKEN. Around $50 a month.

Senator SASSER. $50 a month for medication?

Ms. MCCRACKEN. Yes.

Senator SASSER. Now, Ms. McCracken, given an opportunity to work, would you prefer to work, rather than drawing disability payments?

Ms. MCCRACKEN. Yes.

DISABILITY PAYMENTS ONLY INCOME

Senator SASSER. If you were to lose your disability payments, would you have a sustainable income, that is, an income that would sustain you?

Ms. McCracken. No; I have not. I live alone.

Senator Sasser. What would you do then, to pay for the medication, food, clothing, housing, et cetera?

Ms. McCracken. I have no idea.

Senator Sasser. Do you have any further comments you would like to add?

Ms. McCracken. I just know it has been a hardship. From day-to-day you worry, you wonder what is happening next, and it puts a strain on all, on top of the disability.

Senator Sasser. How long have you been adjudged disabled by the Social Security Administration?

Ms. McCracken. Seventy-three.

Senator Sasser. 1973?

Ms. McCracken. Yes.

Senator Sasser. Thank you, Ms. McCracken.

Does your attorney have anything she would like to add?

BENEFITS CUT DESPITE CONFIRMATION BY PHYSICIAN

Ms. Dennis. Senator, for the record, Ms. McCracken is 52 years old, and has been on the disability rolls for approximately 10 years. And also, in reviewing her file before the Bureau of Hearings and Appeals, I noticed that the consulting physician for Social Security have, at least in part, confirmed most of her allegations. And the records from her treating physicians were very complete.

In spite of all this, the decision to cease her benefits was made by the State agency, and confirmed by the Social Security Administration.

Senator Sasser. Thank you very much. We appreciate your coming in this morning and testifying, Ms. McCracken.

Our next witness will be Ms. Flora Lee. Is she present in the courtroom?

Will you just take a place there, Ms. Lee, and we will ask you a few questions.

For the purpose of the record, Ms. Lee, will you please state your name and age?

STATEMENT OF FLORA LEE

Ms. Lee. Flora Lee, 42.

Senator Sasser. Tell us the extent of your disability.

Ms. Lee. I have had three operations on my back for disc removal, one in 1967, one in 1980 and one in 1982, which no disc was removed, but he removed tar tissue from damaging nerves in the lumbar or something.

Since then, I have severe pains in my back, and I am sore to the bone, you know, like tender around my bone, little knots right in here [demonstrating], that are sore any time I do anything. It is a throbbing pain, and I have sharp pains down.

I have this—I cannot control—my foot.

Senator Sasser. You have a dropped foot?

Ms. Lee. It goes under. It is a pulling sensation on the top, and in the back of the calf, but it pulls like it wants to pull my toes up, but it does not come up. They cramp, they go under like that when they

get tired, and just like that [demonstrating], and I have not been to the doctor since, I think August.

The last doctor I went to, he told me not to come back any more, because there was nothing he could do for me, but finally the doctor gave me some medicine to stay at home, and stop running bills up.

Senator SASSER. Have you ever been examined by social security doctors?

Ms. LEE. Yes, sir, three.

Senator SASSER. Were those doctors familiar with your medical complaints, and your problems?

Ms. LEE. I am not sure if he was, especially. I had never seen him before. I am sure he would never know anything about my case. He did not know anything about my condition.

Senator SASSER. Was that the first time that he had seen you?

Ms. LEE. Yes, sir.

Senator SASSER. Well, have you continued to receive benefits while your termination was being appealed?

Ms. LEE. No, sir. I just appealed it. I get my last check in May, they notified me last week, the week before last, that my last check would be in May, but I would not be receiving anything while I am on appeal.

MEDICAL CONDITION HAS WORSENED

Senator SASSER. Now, since you were first judged disabled, has your medical condition improved to any extent?

Ms. LEE. No, sir. It has gotten three times worse, really.

Senator SASSER. In other words, you have actually—your condition has gone down hill, according to your view of it?

Ms. LEE. I am definitely down hill. I cannot even sleep at night.

Senator SASSER. Now, for the purpose of the record, will you describe your—whether or not you consider yourself to be in pain at the present time, or generally in pain?

Ms. LEE. I have stabbing, severe stabbing pain all the time, and any time I sit, it is worse. It is unbearable sitting. I can stand a little, but when I sit, it is unbearable in my hips, and right in this part of my thighs. It feels like I am coming apart, like somebody is stabbing me inside.

Senator SASSER. Do you require medication for your disability?

Ms. LEE. Yes, sir, but I—somebody else will have to read that.

Senator SASSER. Well, I will tell you what we will do. Why do we not just get a copy of that and submit it, and put it in the record?

[The following was received for the record:]

FEB 27 1984

PHARMACIST'S STATEMENT

Flora Lee Rt 1 Box 302 Collierville Tenn.

NAME OF PERSON FOR WHOM DRUGS AND MEDICINE PRESCRIBED	DATE OF PURCHASE	PRESCRIPTION NUMBER	NAME OF DRUG	QUAN	CHARGE
Flora Lee			Propoxyphene APAP	100	12.99
			Amitriptyline 50mg	100	13.69
			Meclizine 12.5mg	100	4.39
			Soma 350mg	100	31.49
			Nestazone 50mg	100	27.49
			Hydroxyzine 25mg	100	15.99
			Tandearil 100mg	100	26.49
			Dalmane 15mg	30	8.09
			Epoy 1%	1	7.49
			Timoptic 0.5%	1	11.29

NAME OF DRUG STORE OR DISPENSARY: SUPER D #184

STREET ADDRESS: 700 W. Poplar

CITY: Collierville, STATE: Tenn 38017

I HEREBY CERTIFY THAT THESE DRUGS AND MEDICINES WERE DISPENSED TO THE ABOVE NAMED PERSON BY ORDER OF HIS (OR HER) PERSONAL PHYSICIAN.

J. D. Solomon #2987

SIGNATURE OF PHARMACIST

NAME OF SUBSCRIBER | GROUP NUMBER | CONTRACT NUMBER

SD-3074

Ms. LEE. I have glaucoma, I have had 12 operations on my eyes. Now, some of that medication is for glaucoma.

Senator SASSER. I see. Our records do not show that you have a condition of the eyes.

Ms. LEE. It does not show that I have one?

Senator SASSER. Can you estimate how much you spend on medication every month?

Ms. LEE. I buy like—$1 a month—whenever I have the money to get, but the last time I bought, all I was supposed to get was $146. You know, just what the prescription called for, but I am sure it was enough to last more than a month, because of it was 100 pills, you know, like that.

Senator SASSER. Given the opportunity to work, would you prefer to work?

Ms. LEE. Yes, sir, I certainly would.

Senator SASSER. Are you dependent upon your disability benefits to sustain you? By that, I mean, do you have any other income, other than your disability benefits?

Ms. LEE. No, sir, nothing but 7 dollars' worth of food stamps.

Senator SASSER. Do you have any further comments, Ms. Lee, that you would like to make this morning, or anything that you would like to add for our record here?

CAN'T STAND ON FEET VERY LONG

Ms. LEE. Well, only that when I got my letter back, they said I could stay on my feet 6 hours. Even if I could, I could not stand the pain to stand on my feet for 4 hours. When I stand on my feet any 2 days in a row, my legs swell up, even on the bottom of my foot, where I cramp, right on the bottom part of my foot. And I swell on the bottom of my foot. Just both under, on the bottom part of my foot, and I can't even walk in the house.

Senator SASSER. In other words, when you were terminated, they indicated you could stand up for 6 hours a day?

Ms. LEE. That is right. Sometimes, they said sometimes I could stand 6 hours a day.

Senator SASSER. When were you adjudged disabled?

Ms. LEE. In 1982, and again—oh, 1967. I am sorry.

Senator SASSER. You have been on the disability rolls since 1967?

Ms. LEE. Yes, sir.

Senator SASSER. Thank you, Ms. Lee.

Our next witness will be Mr. Robert Brooks.

Mr. Brooks, will you state your name and age for the record, please?

STATEMENT OF ROBERT E. BROOKS, ACCOMPANIED BY STEVEN HAWKS, MEMPHIS AREA LEGAL SERVICES, INC.

Mr. BROOKS. My name is Robert E. Brooks. I am 34 years old.

Senator SASSER. Would you identify yourself?

Mr. HAWKS. I am Steven Hawks. I am an attorney for Mr. Brooks at the Memphis Area Legal Services.

Senator SASSER. Kindly explain the extent of your disability, Mr. Brooks.

Mr. BROOKS. Well, in 1979, my left lung collapsed, and I was raced to the hospital, and the doctor told me for my left lung, and then he discovered that I had myeloma. So I was put on disability, and I have been treated for myeloma, and chemotherapy.

Senator SASSER. Chemotherapy?

Mr. BROOKS. Yes, sir.

Senator SASSER. Are you still undergoing chemotherapy treatments?

Mr. BROOKS. Yes, sir.

Senator SASSER. Have you been examined by a social security doctor?

Mr. BROOKS. Yes, sir, a couple of times.

Senator SASSER. When you were examined by this—on the two occasions you have been examined by social security doctors?

Mr. BROOKS. Yes, sir.

Senator SASSER. Was it the same doctor both times, or a different doctor?

Mr. BROOKS. Different doctor.

DOCTOR NOT FAMILIAR WITH MEDICAL HISTORY

Senator SASSER. Did you come away from these examinations with a feeling that these doctors were familiar with your medical complaints, or medical history?

Mr. BROOKS. No, sir, because one of them told me that he did—did not understand the case. He did not know what they were sending me there for, but he would examine me, and he did.

Senator SASSER. In other words, when he undertook the examination, he did not, to your knowledge, understand that you had multiple myeloma?

Mr. BROOKS. That is right, sir.

Senator SASSER. Did he know that you had been receiving chemotherapy treatments?

Mr. BROOKS. No, sir.

Senator SASSER. Now, you have been terminated. Your benefits have been terminated, or you have been notified of termination. Have you continued to receive the benefits while your termination is going through the appeal process?

Mr. BROOKS. No, sir.

Senator SASSER. In other words, you are receiving no benefits now; is that correct?

Mr. BROOKS. That is correct.

Senator SASSER. Has your medical condition changed, or improved any, since you were first adjudged disabled?

Mr. BROOKS. It got worse.

Senator SASSER. With regard to your ability to get around, or with regard to pain affecting your condition, would you briefly describe that for the record?

Mr. BROOKS. Yes, sir. My left—at times, I lose the complete use of my left side. That is why I have to carry this cane, so when I lose use of my left side, my right side would hold up, my right side. My leg gets numb, and I cannot use it. I have to rub it to get the blood circulation back in it.

Senator SASSER. Now, what medication do you require for your disability? What medicine do you take?

Mr. BROOKS. I do not remember the name. It is——

Mr. HAWKS. He takes Alkeran, which is part of his chemotherapy. He also takes Prednisone. And he—and he also takes pain medication, which eludes me at the moment.

Senator SASSER. Can you estimate the cost of this medication on a monthly basis?

Mr. BROOKS. Well, I never bought it all at one time. The amount that I have bought at one time was approximately $33. You know, I go to the doctor Monday, and what I bought was $33.

Senator SASSER. You go to the doctor every Monday?

Mr. BROOKS. Every month. Yes, sir, once a month.

Senator SASSER. Could your attorney give us an estimate of your—do you know his monthly medical costs?

Mr. HAWKS. No, sir, I do not.

Senator SASSER. Do you feel that you are able to work, Mr. Brooks?

Mr. BROOKS. No, sir.

Senator SASSER. Now that you have lost your disability benefits, how do you sustain yourself? What do you use for income? Do you have any other source of income?

Mr. BROOKS. No, sir. My lights are supposed to be cut off today. I am $800 behind the rent also. I do not have any other kind of income.

Senator SASSER. How do you pay for your food and clothing? How do you intend to do that?

Mr. BROOKS. Well, we get stamps—and I do not—we—I cannot afford to buy any clothes.

Senator SASSER. Do you have any further comments that you would like to make this morning, either you or your attorney?

STANDING ON LEG CAUSES NUMBNESS

Mr. BROOKS. Yes, sir, I would like to say when I stand on my leg, you know, the last doctor I went to told me that I could—you know, I was able to work, you know, I could get a part-time job, and work so many hours a day. But when I would stand on my leg, that is when it gets numb, and he said maybe I need to do a lot of exercising on it, and try that. But that does not even work.

Mr. HAWKS. I would like to, if I may, supplement the record by providing your office with the medical cost, and the precise list of medications that we were not able to provide you with this morning.

I would also like to add that Mr. Brooks was working a steady job, supporting his family when he was stricken with this disease. And that his physician has diagnosed not only multiple myeloma, which is being treated with chemotherapy, but also chronic numbness all through his left side, particularly his leg, and also abdominal pain, that he has been treated by this physician since 1979, and continues to be treated by him.

And that the social security consultant examiner, in his examination, made note that Mr. Brooks' gait was normal during his examination.

Senator SASSER. Made note of what?

Mr. HAWKS. His gait, g-a-i-t, was normal, despite the chronic numbness of his right leg. That to me at least underscores the lack of familiarity of the social security doctor with Mr. Brooks' condition.

Senator SASSER. Would you like to add something further, Mr. Brooks?

Mr. BROOKS. Yes, sir. I would like to say I am supposed to go to the doctor today and be treated. I went yesterday—the day before yesterday, and I had to go for a checkup. And he says my myeloma is affecting my jaws. He thinks it gave me lockjaw, and I am supposed to go to the doctor today to get X-rays, to find out what it has done. He has got my mouth in a position where it is closed, and I cannot open it, just barely open it up.

Senator SASSER. Mr. Brooks, thank you for appearing here this morning, and giving us the benefit of your experience.

Thank you, counsel.

Our next witness is Mr. Clifford Berryhill. Is he in the hearing room?

Would you come forward?

Would you state for the record, please, sir, your name and age?

STATEMENT OF CLIFFORD BERRYHILL

Mr. BERRYHILL. Clifford Berryhill.

Senator SASSER. What is your age, Mr. Berryhill?

Mr. BERRYHILL. Fifty-four.

Senator SASSER. And explain, please, the extent of your disability, your physical disability.

Mr. BERRYHILL. Well, I had a brain surgery, sir, and I have seizures, and I am awful nervous, and stay nervous all the time.

Senator SASSER. Have you ever been examined by a social security doctor, Mr. BERRYHILL?

Mr. BERRYHILL. Yes, sir.

Senator SASSER. More than once, or just once?

Mr. BERRYHILL. Twice. Twice, sir.

Senator SASSER. Was it the same doctor, or a different doctor each time?

Mr. BERRYHILL. Different doctor, sir.

Senator SASSER. Do you know what kind of physician he was? Was he a neurologist?

Mr. BERRYHILL. No, sir, I do not.

Senator SASSER. Did you feel that this doctor was familiar with your medical history, and your complaints at the time that either one of them examined you?

Mr. BERRYHILL. No, sir.

Senator SASSER. And what led you to form the judgment that they were not familiar with your medical history, or complaints?

Mr. BERRYHILL. Well, they are the ones that made me the appointment with them.

Senator SASSER. When you say they are the ones, who do you mean? The Social Security Administration?

Mr. BERRYHILL. Yes, sir.

Senator SASSER. Now, you have been terminated from social security, is that correct?

Mr. BERRYHILL. Right, sir.

Senator SASSER. Have you continued to receive benefits? Are you appealing that termination?

Mr. BERRYHILL. Yes, sir, I am appealing now.

Senator SASSER. Have you continued to receive benefits while the appeal process is underway?

Mr. BERRYHILL. No, sir.

Senator SASSER. So you are receiving no benefits at all at the present time?

Mr. BERRYHILL. None, whatsoever, sir.

Senator SASSER. Has your medical condition improved since you were first adjudged disabled, back in 1972?

Mr. BERRYHILL. No, sir.

Senator SASSER. Has it gotten any worse?

Mr. BERRYHILL. It has gotten worse. My nerves are worse. I think I have had more seizures.

Senator SASSER. How do these seizures manifest themselves? Give us a description of them.

Mr. BERRYHILL. Just like you and me can be talking right now, sir, and I would just go into one, and I cannot remember nothing. Get dizzy and just pass out.

Senator SASSER. How often do these occur?

Mr. BERRYHILL. They have just—last month I had two.

Senator SASSER. Are they similar to an epileptic seizure?

Mr. BERRYHILL. Yes, sir, a lot of people think they are, but they are not related to that.

Senator SASSER. Is there any pain associated with your condition, Mr. Berryhill.

Mr. BERRYHILL. Yes, sir, it leaves me awful weak.

Senator SASSER. Physical weakness, or actual pain?

Mr. BERRYHILL. Physical.

Senator SASSER. Physical weakness?

Mr. BERRYHILL. Yes, physical.

Senator SASSER. Now, do you require any medication for this disability?

Mr. BERRYHILL. Yes, sir, I require two different types of medicine.

Senator SASSER. How often do you take this medication?

Mr. BERRYHILL. I take it three times a day.

Senator SASSER. How much do you spend on this medication? What is the cost?

Mr. BERRYHILL. Well, now I go to a county hospital, county clinic, and I pay the doctor there. And if they have some medication on hand, they usually give me a bottle. But if they do not, I have to pay for it. If I pay for it, it costs me between $30 to $40 a month.

Senator SASSER. Now, in your estimation, are you able to work, Mr. Berryhill?

Mr. BERRYHILL. No, sir.

Senator SASSER. Would you prefer to hold a job?

Mr. BERRYHILL. I much would.

Senator SASSER. How long were you in the work force before you were adjudged disabled? How many years did you work?

Mr. BERRYHILL. Since I was 14 years old, and I worked until my brain surgery.

Senator SASSER. Now, if you were—if you lose your disability benefits on a permanent basis, do you have any other income to sustain you?

Mr. BERRYHILL. Yes, sir, I have a small VA coming in.

Senator SASSER. You have a small Veterans' Administration benefit?

Mr. BERRYHILL. Yes, sir.

DISABLED 100 PERCENT AS ADJUDGED BY VA

Senator SASSER. Have you been adjudged disabled by the Veterans' Administration?

Mr. BERRYHILL. No, sir, they have me 100 percent disabled.

Senator SASSER. How do you qualify for veterans disability pension?

Mr. BERRYHILL. It is not service connected.

Senator SASSER. I am not sure I understand that.

Mr. BERRYHILL. Well, I do not know. They gave it to me when I was in the veterans hospital, and they called it not service connected.

Senator SASSER. But it is a disability pension?

Mr. BERRYHILL. Yes, sir, disability.

Senator SASSER. So the VA continues to consider you disabled?

Mr. BERRYHILL. Yes, sir.

Senator SASSER. But the Social Security Administration has made a determination that you are not disabled?

Mr. BERRYHILL. Right, sir.

Senator SASSER. Do you have any further comments, or statements that you would like to make this morning for the record?

Mr. BERRYHILL. No, sir. Just like I said, me and my wife, I have a child, and it puts us in a lot of misery, you know, doing without our social security.

Senator SASSER. All right, Mr. Berryhill, thank you for coming up here this morning and giving us the benefit of your experience.

Thank you, sir.

Mr. BERRYHILL. Thank you, sir.

Senator SASSER. Our next witness is Ms. Vivian Branch.

Is Ms. Branch in the hearing room?

If you would come forward, please, Ms. Branch, and have a seat.

Would you state your name and age, please, for the record?

STATEMENT OF VIVIAN K. BRANCH, ACCOMPANIED BY DONALD A. DONATI, ATTORNEY, DONATI, DONATI, ROBBINS & GOSNELL

Ms. BRANCH. Vivian K. Branch. I am 48 years old.

Senator SASSER. And, counsellor, would you state your name?

Mr. DONATI. My name is Don Donati. I am a lawyer in Memphis. I represent Ms. Branch.

Senator SASSER. All right.

Ms. Branch, would you state for the record the extent of your disability?

Ms. BRANCH. I have eight chronic illnesses, carrying pain with limitation of walking, standing, sitting. I am in constant pain. I take medication.

Senator SASSER. According to our record, here, you have got a chronic kidney problem, with Addison's disease. Is that correct?

Ms. BRANCH. Yes, sir. I have one kidney, and it has a stone in it that is too large to pass, but the doctor——

Senator SASSER. You only have one kidney that is operating, and that has stones in it?

Ms. BRANCH. Right.

Senator SASSER. Arthritis?

Ms. BRANCH. Yes, sir. I have degenerative arthritis, that is getting worse. My ankle now needs a brace. The doctor specified I get a brace, but I do not have the money, since I was cut off, to get that.

Senator SASSER. Diverticulitis?

Ms. BRANCH. Chronic diverticulitis, that I have bleeding from time to time, kind of, and I have to go to the emergency room.

Senator SASSER. High blood pressure?

Ms. BRANCH. Yes, sir, and I take medication for high blood pressure.

Senator SASSER. And ulcers?

Ms. BRANCH. I have a peptic ulcer, and I take medicine for that, too.

Senator SASSER. Have you ever been examined by a social security doctor, Ms. Branch?

Ms. BRANCH. Yes, sir, I have.

Senator SASSER. By one, or more than one?

Ms. BRANCH. By two. A psychiatrist first, and a medical doctor.

Senator SASSER. I see. And at the time you were examined by the medical doctor, did you feel that he was familiar with your medical history, and your complaints?

Ms. BRANCH. No, sir, I did not feel that he was familiar with it, and I do not know if he had—I do not think he had my doctor's medical records.

Senator SASSER. In other words, you do not think he examined your medical records prior to examining you, is that correct?

Ms. BRANCH. No. sir.

Senator SASSER. What leads you to that conclusion, Ms. Branch?

Ms. BRANCH. Because of the things that he stated, you know, that it was—every time he would ask me a question and I would try to reply to him of what information I had in my feelings, he would tell me there was no reason.

Senator SASSER. How long did the social security doctor or physician interview you and examine you? What was the duration of the examination?

Ms. BRANCH. He examined me about 20 or 25 minutes, at the most. I was in his office from 9 o'clock until 2:30, but I was just sitting and waiting most of the time. And he also stated that he gave me a test that he did not give me. I am very familiar with the test.

Senator SASSER. What test?

Ms. BRANCH. He said he gave me an electroencephalogram, and he did not. An electroencephalogram is on your head. I have had it, but he did not give it to me. I had it from my regular doctor.

Senator SASSER. Now, you have been terminated from your disability benefits?

Ms. BRANCH. Yes, sir, I have.

Senator SASSER. And you are now appealing that termination?

Ms. BRANCH. Yes. sir.

Senator SASSER. Have you continued to receive benefits after being terminated, during the appeal process?

Ms. BRANCH. Before I went before the judge, yes. I got it until October, when my last check was—I got it November for the October check.

Senator SASSER. In other words she has received benefits while going through the appeal?

Mr. DONATI. Through the hearing process, yes.

Senator SASSER. Is she continuing to receive those, counselor?

Mr. DONATI. Not at the present time.

Senator SASSER. Now, Ms. Branch, has your medical condition changed any since you were first adjudged disabled?

SIX MORE CHRONIC PROBLEMS HAVE DEVELOPED

Ms. BRANCH. Yes, sir, it has. I only had two problems that they awarded it to me on, and since that time I have developed six more chronic problems. Both kidneys were functioning when I first got on, to my knowledge.

Senator SASSER. So is it your testimony that your medical condition has deteriorated since being adjudged disabled, in 1972?

Ms. BRANCH. Yes, sir.

Senator SASSER. Now, with regard to medication, do you take any medication for your medical problems?

Ms. BRANCH. Yes, sir. But since I have been cut off, I have not had—I have prescriptions here now that I have not had money to have filled, but I have been taking. I have a list here. I take kidney medication.

Senator SASSER. Would you just detail for the record, if you have it there, the type medication that you take, and what it is for?

Ms. BRANCH. OK. I take Mandelamine for the kidneys. Mandelamine is spelled M-a-n-d-e-l-a-m-i-n-e, that is 500 milligrams, four times a day.

I take Tenormin—50 milligrams—T-e-n-o-r-m-i-n.

Mandelamine is $11.30.

Senator SASSER. What we might do is total, if we can get a monthly medical cost, for all the medications, if she has that available.

Ms. BRANCH. Tenormin, 50 milligrams, one time a day, for hypertension. That is $23.94.

I take Tagamet, T-a-g-a-m-e-t, for the ulcer, two times a day. That is 200 milligrams, that is $15.92.

And I have been on Disolan, D-i-s-o-l-a-n, for arthritis. That is is 500 milligrams, three times a day. And that is $11.64.

I take Fiorinal for migraine headaches, as needed. That is $9.13, and sometimes I have a migraine headache anywhere from a day to 3 or 4 weeks, everyday, without any let up.

I use a Premarin cream, P-r-e-m-a-r-i-n cream, to control a hemorrhaging that I have, and that is two times a week, and that is $26 for two.

And the other is like over-the-counter medication I take. I have to take Metamucil, M-e-t-a-m-u-c-i-l, for the colon problem.

And I take vitamins, and sometimes I have to take Actifed, A-c-t-i-f-e-d, because I have a sinus problem.

Senator SASSER. What is your average monthly medical expense, as a result of purchasing medications for these various personal problems?

MEDICATIONS COST OVER $90 A MONTH

Ms. BRANCH. If I get all of my medication, it would run me anywhere from $90 to $100 per month, including the over-the-counter medications, like vitamins, and whatever. But sometimes I have to get just half of it, because I do not have enough money to get it all.

Senator SASSER. Is your condition a painful one, Ms. Branch?

Ms. BRANCH. Yes, sir.

Senator SASSER. How does this pain manifest itself?

Ms. BRANCH. It is severe pain. It is piercing pain that causes me—I am uncomfortable sitting, standing, or even lying down. To try to get a good night—most nights I have to hang my left leg, which the arthritis is worse, out of the bed. Some nights I have to sit up. And this is every day pain, daily pain.

Senator SASSER. Do you consider yourself able to hold a job, Ms. Branch?

Ms. BRANCH. No, sir, I do not. I have tried, even before I got on disability. My doctor wrote that I would tell him times that I was off from work, and I would really be going to work. He suggested that I not work, and I would go any way, and not tell him what I was doing, until I just could not go any longer.

Senator SASSER. Do you rely solely on your disability benefits to sustain yourself, or do you have another source of income?

Ms. BRANCH. Yes, sir, I live with my mother, who is on social security also, and now I apply for food stamps. That is all I have now.

Senator SASSER. So you have no other source of income, other than living withyour mother, and food stamps?

Ms. BRANCH. Right.

Senator SASSER. Do you have any further comments, or statements you would like to make here this morning, Ms. Branch?

Ms. BRANCH. Other than the fact that it has been enlightening for me to come before you and testify. And that I feel that the doctor that examined me was not qualified to examine me, and that I went before a psychiatrist that I felt was totally irrelevant, was not to my problem, not related to my problem.

Senator SASSER. You were adjudged disabled on the basis of which one of these physical problems?

Ms. BRANCH. The Addison's Disease, and tuberculosis of the kidney.

Senator SASSER. You have tuberculosis of the kidney?

Ms. BRANCH. That is what I was judged at. So since that time, see, one kidney is not functioning, and the other one has a stone in it too large to pass at this time, which causes a steady pain.

Senator SASSER. Counselor, do you have any statement, or comment you would like to make?

Mr. DONATI. I am to be a witness in a few minutes on another matter.

As far as Ms. Branch, I think it is important, and you will hear some testimony about the issue of severity, and whether or not a person has a severe disability. And I think that is very important, as well as medi-

cal improvement standards, and I know your bill approaches that, and Ms. Branch is a classic example of both of those.

Senator SASSER. Thank you very much for appearing here this morning to testify.

Our next witness will be Ms. Olivet Patton. Is Ms. Patton—is Mr. Patton here?

Would you please come forward?

Would you state your name and age for the record, please?

STATEMENT OF OLIVET PATTON, ACCOMPANIED BY RONALD IVEY, PARALEGAL, MEMPHIS AREA LEGAL SERVICES, INC.

Ms. PATTON. Olivet Patton, 53.

Senator SASSER. Is this your attorney with you?

Ms. PATTON. Yes.

Senator SASSER. Would you identify yourself?

Mr. IVEY. My name is Ronald Ivey. I am a paralegal with the Memphis Area Legal Services.

Senator SASSER. Now, Ms. Patton, would you detail for the record the extent of your disability? That is, what is your physical problem?

Ms. PATTON. I have systemic lupus, rhematoid arthritis, anemia, and I have leg ulcers and high blood pressure.

Senator SASSER. Now, would you just tell us, describe in layman's terms, if you would, how each one of these diseases affect you?

For example, what is lupus, and how does that affect you?

Ms. PATTON. Lupus is a——

Senator SASSER. If you know.

Ms. PATTON. It is a disease, and it ties in, they say, with my anemia, and I have to have blood transfusions every so often.

And then I have rashes, and this arthritis has crippled my hands.

Senator SASSER. And now your hands, the arthritis is in your hands?

Ms. PATTON. Yes.

Senator SASSER. Is it in any other part of your body?

Ms. PATTON. In my knees, and my hips, and this ulcer on my leg breaks out in one place, and breaks out again, and bleeds.

Senator SASSER. Now, have you ever been examined by social security doctors?

Ms. PATTON. Yes, sir, two.

Senator SASSER. And when did these examinations take place, if you recall?

Ms. PATTON. They were in April of last year. April in one, and May, I believe it was.

Senator SASSER. Now, Ms. Patton, do you feel that the social security doctors who examined you, were they familiar with your medical history?

Ms. PATTON. No, they were not.

Senator SASSER. And on what do you base the determination that they were not familiar with your medical history, or complaints?

Ms. PATTON. Because they never put their hands on me. They just took a chest X-ray and eye test, and my eyes are bad. I can hardly see the newspaper to read it. So they did not do a thorough examination.

Senator SASSER. Did they examine your hands?

Ms. PATTON. They looked at them.

Senator SASSER. Is the rheumatoid arthritis, that you cannot bend your fingers on that particular hand, is that correct?

Ms. PATTON. Yes, and I cannot grip nothing.

Senator SASSER. In other words, you cannot hold anything with your right hand?

Ms. PATTON. No.

Senator SASSER. How about your other hand? What is the condition of it?

Ms. PATTON. It is not quite as bad as the other one.

Senator SASSER. But you are losing the ability? In other words, you cannot close your hand? You cannot make a fist?

Ms. PATTON. No. I cannot close that finger.

Senator SASSER. Now, this arthritic condition here that is apparent even to the layman, is that improving, or deteriorating?

Ms. PATTON. It is worse, because I hurt now down to my hips, everywhere. Even my neck has these lympth glands that swell, and I feel like I am choking.

Senator SASSER. Now, your disability benefits have been terminated. Have you appealed this termination?

Ms. PATTON. Yes, I have.

Senator SASSER. Now, given the opportunity to work, Ms. Patton, would you prefer to work?

Ms. PATTON. I sure would.

Senator SASSER. Do you feel that you are capable of working?

Ms. PATTON. You mean able?

Senator SASSER. Yes. Are you able to work?

Ms. PATTON. No, sir, I do not feel like I am able to work.

Senator SASSER. How many years did you work before you were adjudged disabled?

Ms. PATTON. I worked about 20 years straight.

Senator SASSER. So you worked for 20 years before the Social Security Administration adjudged that you were disabled?

Ms. PATTON. Yes.

Senator SASSER. Now, Ms. Patton, do you take medications for your disability?

Ms. PATTON. Yes, I do.

Senator SASSER. Just detail for the record here what type of medication that you take.

Ms. PATTON. I take Prednisone, that is spelled Pr-e-d-n-i-s-o-n-e, Hydrochlorothiazide, spelled H-y-d-r-o-c-h-l-o-r-o-t-h-i-a-z-i-d-e, Ferrous Sulfate, two words, F-e-r-r-o-u-s and S-u-l-f-a-t-e, and Ferrous Sulfate Moltrin, M-o-l-t-r-i-n; Tylenol Three.

Senator SASSER. How much do these medicines cost you on a monthly basis, do you know?

Ms. PATTON. They run about $40 a month.

Senator SASSER. So you pay $40 a month for medication?

Ms. PATTON. Yes.

Senator SASSER. Now, what would happen to you, Ms. Patton, if you lost your disability payments? Do you have any other source of income?

Ms. PATTON. No, I do not. No other source.

Senator SASSER. How would you pay for your food, and housing and clothing and medication?

Ms. PATTON. I do not get food stamps. I do live with my mother. I do not have stamps. So I do not know how I would make it.

Senator SASSER. So you do not know how you would make it if you lost your disability benefits on a permanent basis?

You have no other source of income to pay for your——

Ms. PATTON. None, whatsoever.

Senator SASSER. How old is your mother?

Ms. PATTON. Eighty-two.

Senator SASSER. Does your mother have any other source of income?

Ms. PATTON. No.

Senator SASSER. You and your mother live alone together?

Ms. PATTON. Yes.

Senator SASSER. Now, with regard to your physical condition, Ms. Patton, would you just detail whether it is painful or not?

Ms. PATTON. I have pain constantly, and have severe headaches all the time, and dizzy spells. And I hurt constantly. This leg hurts me so bad, sometimes I do not know what to do. These ulcers.

Senator SASSER. Do you have any further comments that you would like to make this morning?

Ms. PATTON. I am just glad someone is concerned about us sick people.

Senator SASSER. Well, thank you very much for coming here this morning and giving us the benefit of your experience.

Would you like to make a statement, counselor?

Mr. IVEY. No, I do not have anything, sir.

Senator SASSER. Thank you very much.

Ms. PATTON. Thank you.

Senator SASSER. Our next witness is Ms. Dorothy Turner. Is she in the hearing room?

Would you please come forward, Ms. Turner?

Welcome, and have a seat, Ms. Turner.

Would you state your name, and I hate to ask a lady her age, but also your age, for the record, please?

STATEMENT OF DOROTHY TURNER

Ms. TURNER. Dorothy Turner. I am 51.

Senator SASSER. Now, Ms. Turner, you were adjudged disabled when?

Ms. TURNER. In 1981.

Senator SASSER. In 1981? Would you explain, please, the extent of your disability, for the record here this morning?

Ms. TURNER. I have rheumatoid arthritis, and I have cystic lupus.

Senator SASSER. What is cystic lupus?

Ms. TURNER. It is an inflammation of the connecting tissues in the body. It is a very weakening disease. And it can attack the vital organs.

Senator SASSER. Have you ever been examined by a social security doctor?

Ms. TURNER. Four.

Senator SASSER. And over what period of time were you examined by these four doctors?

Ms. TURNER. I was examined in 1981 by two doctors. One was a psychiatrist, one was an MD. And then recently, I have been sent to a psychologist and——

Senator SASSER. When you were examined by these various physicians, did you feel that they were familiar with your medical history, or medical complaints?

Ms. TURNER. No, not at all.

Senator SASSER. On what did you base that determination?

Ms. TURNER. Because I was asked questions by the psychiatrist and psychologist, that had nothing to do with my sickness whatsoever.

Senator SASSER. Now, your benefits have been terminated, is that correct, or you have been notified?

Ms. TURNER. I have been notified.

Senator SASSER. Are you presently appealing this termination?

Ms. TURNER. Yes, I have appealed it.

Senator SASSER. Are you being paid disability benefits while the appeal process goes on?

Ms. TURNER. Yes, we will be through Monday.

Senator SASSER. Since you were first adjudged disabled, has your medical condition improved, to any extent?

Ms. TURNER. No, it has not. If anything, it has worsened. I am weaker.

Senator SASSER. You are weaker. Just tell us what makes you feel that you are physically disabled.

Ms. TURNER. My joints are very sore, and I have—I am in pain all the time. My ankles are very weak. They swell. I fall very easily. I have a lot of trouble with my knees, my hip. I have had Cortisone injections in the joints. I have no grip in my hand. And my wrists are very weak. I have had to wear a brace on one for a while, at different particular times. I have a lot of trouble with my shoulders, and my collarbone.

Senator SASSER. When were you first diagnosed as having lupus?

Ms. TURNER. That has been—I cannot give you the exact date. About 1½ years ago.

Senator SASSER. When was the diagnosis of rheumatoid arthritis?

Ms. TURNER. Seventy-nine.

Senator SASSER. Were you working prior to receiving disability payments?

Ms. TURNER. Yes, I had my own business.

Senator SASSER. How long were you self-employed?

Ms. TURNER. Thirteen years.

Senator SASSER. Had you had any other employment prior to that time?

Ms. TURNER. No.

Senator SASSER. Do you take medication for your disability.

Ms. TURNER. Yes, I do.

11 DIFFERENT MEDICATIONS BEING TAKEN

Senator SASSER. What type medication, and how much does it cost a month?

Ms. TURNER. I take 11 different drugs. I have a note of them. Predisone, Tagamet, Dolobid, Slow-K, Vitamin D, Os-Cal, Inderal, Plaquenil, Ascripton, up to 12 a day, for pain, Darvocet, the same for pain, and Lasix. And it runs around $60 a month.

Senator SASSER. Now, if you lose your disability benefits, do you have any other outside source of income on which to sustain yourself?

Ms. TURNER. No.

Senator SASSER. Well, how would you pay for your medication, and your food, housing, clothing, et cetera?

Ms. TURNER. I do not know.

Senator SASSER. You do not know what you would do if you lose your benefits?

Ms. TURNER. No; I have been using my savings, and I did draw insurance disability that I had.

Senator SASSER. In other words, you were adjudged disabled by a private insurance company?

Ms. TURNER. Two different companies, yes.

Senator SASSER. Two companies said you were disabled, on the terms of their policy, private companies, but now the Social Security Disability Administration is saying you are not disabled?

Ms. TURNER. That is right.

Senator SASSER. Now, Ms. Turner, do you have any further statement, or comments you would like to make this morning, for the record?

Ms. TURNER. There is no way that I could possibly work under this condition.

Many days I cannot stay up all day. And in the mornings especially I cannot function well. I have to—several times I go back to bed in the morning to try to get up to stay all day. When I do any physical work 1 day around the house, I have to stay in bed the next day. So that is why I cannot work. I would much rather be working.

Senator SASSER. But you feel you are just unable to work?

Ms. TURNER. I am unable to work. I cannot work.

Senator SASSER. Thank you, Ms. Turner.

Ms. TURNER. Thank you. I appreciate your concern.

Senator SASSER. Well, you are quite welcome.

Our next witness is Freddy Williams. If you would come forward, Mr. Williams.

Mr. Williams, if you would identify yourself for the record, please. State your name.

STATEMENT OF FREDDY WILLIAMS, ACCOMPANIED BY KAREN P. DENNIS, ATTORNEY, MEMPHIS AREA LEGAL SERVICES, INC.

Mr. WILLIAMS. Freddy Williams, 581 William Avenue, 55 years old.

Senator SASSER. And if your attorney will state her name again, please.

Ms. DENNIS. Again, Senator, my name is Karen Dennis, and I am an attorney for Memphis Area Legal Services.

Senator SASSER. Tell us, please, Mr. Williams, the extent of your disability. In other words, what is wrong with you?

Mr. WILLIAMS. My shoulder and my neck, my heart and my lungs, and my right leg. Had four operations.

Senator SASSER. Four operations.

Mr. WILLIAMS. I have had a broken neck.

Senator SASSER. You have had a broken neck?

Mr. WILLIAMS. Had one, yes, and had a disc moved out of it, and been operated on my shoulder twice and have been operated on for a hernia.

Senator SASSER. Your medical history reveals you have arthritis.

Mr. WILLIAMS. Yes, sir.

Senator SASSER. Arthritis of the neck, heart trouble.

What kind of heart difficulty do you have?

Mr. WILLIAMS. Well, I do not—I have pain, chest pains here in this shoulder. I have to use these under my tongue.

Senator SASSER. Nitroglycerin tablets?

Mr. WILLIAMS. Yes, sir.

Senator SASSER. So you apparently have angina pectoris?

Mr. WILLIAMS. Yes.

Senator SASSER. And you have gastrointestinal problems?

Mr. WILLIAMS. Yes, sir.

Senator SASSER. And have you had any type of chest surgery, restructure or structured pulmonary disease? Have you had any chest surgery?

Mr. WILLIAMS. No chest surgery. I had a heart attack in 1968.

Senator SASSER. You had a heart attack?

Mr. WILLIAMS. Yes, sir, in 1968.

Senator SASSER. Now, when were you first adjudged disabled, Mr. Williams?

Mr. WILLIAMS. Well, I was disabled January 1972, but they improved my disability until 1975.

Senator SASSER. So you began receiving disability payments in 1975?

Mr. WILLIAMS. Yes, sir, in July 1975.

Senator SASSER. Have you ever been examined by a social security doctor?

Mr. WILLIAMS. Yes, sir, I have. I was examined once by Dr. Glenn Halton before I got this disability.

Senator SASSER. You have only been examined by one doctor?

Mr. WILLIAMS. No, sir. I was sent to Dr. Segram and Poplar in Poplar Towers Building, since they sent me out the letter of termination.

Senator SASSER. Did you feel that this social security doctor who examined you was familiar with your medical history? Did he know what your problems were before you got there?

Mr. WILLIAMS. Dr. — which one you speaking of?

Senator SASSER. The one that terminated your benefits.

Mr. WILLIAMS. Well, I feel that he might have been familiar with those type diseases, but I do not know about my history record. And on the heart condition, I did receive a letter from him saying—the doctor said I was disabled, but they thought I could work. But in the heart tests they gave me, and giving those tests, I was taking many ones of them, they put those little things on your chest. But if they do not stay on, they cannot get an accurate reading. So I have hair on my chest.

They just put them on every time. Every time they put them on there, they may not know it, but they came loose. Most times they shave a person.

Senator SASSER. In other words, they put the electrocardiogram on you, but they did not shave your chest before putting them on there?

Mr. WILLIAMS. No, sir.

Senator SASSER. Do you take any medication for your disability other than the nitroglycerin tablets?

Mr. WILLIAMS. I take six different—I take a fluid tablet. I take a high blood pressure tablet. I take an arthritis tablet. I take a lot for breathing, and then I take a pain pill.

Senator SASSER. You take a pain pill?

Mr. WILLIAMS. Yes, sir.

Senator SASSER. Is there pain associated with your condition, Mr. Williams?

Mr. WILLIAMS. Yes, sir.

Senator SASSER. What type of pain?

Mr. WILLIAMS. I have pain in the neck, and in my shoulder and my hand. I have arthritis in my hand, and they slow up and have not had them straightened out yet.

Senator SASSER. I see.

Mr. WILLIAMS. And I have a bad leg. Varicose veins about the size of a quarter.

Senator SASSER. How long did you work during your lifetime, worker career before you were adjudged disabled?

TRACTOR-TRAILER DRIVER 27 YEARS

Mr. WILLIAMS. Well, I do not know exactly, but I have 27 years on the tractor-trailer on the road.

Senator SASSER. So you were an over-the-road driver for 27 years?

Mr. WILLIAMS. Yes, sir.

Senator SASSER. If you lose your disability benefits, do you have any other source of income, Mr. Williams?

Mr. WILLIAMS. No, sir, not any.

Senator SASSER. Well, if you lose the the social security disability benefits, how are you going to buy food and shelter and clothing and your medication?

Mr. WILLIAMS. I do not know.

Senator SASSER. Will either you or your attorney have any other comments that you would like to make this morning?

Mr. WILLIAMS. No, sir, I do not have—what did you say? I was 3 years practically, 4 years getting the disability. And what I did was approve—said was they figured me $900 and then, you know, at a——

Senator SASSER. Do you feel like you are capable of working? Could you hold a job?

Mr. WILLIAMS. No, sir. If I could, I would be on it because this money I am getting is not enough to take care of my expenses.

Senator SASSER. So you would prefer to be working?

Mr. WILLIAMS. I prefer to be working, because I would have gone to work those 4 years that I lost before I could get any disability.

Senator SASSER. So you were off from work 4 years before you could get disability?

Mr. WILLIAMS. Yes, sir.

Senator SASSER. What do you think is the single condition that keeps you from working, Mr. Williams?

Mr. WILLIAMS. Well, one thing, my heart and my hands, they slow up, and they ache, and a lot of times that I do not even get up durnig the day.

Senator SASSER. How often?

Mr. WILLIAMS. I have weak spells on my heart.

Senator SASSER. How often do you have these chest pains that require you to take nitroglycerin?

Mr. WILLIAMS. Well, three to four times a day. But I take a heart tablet four times a day.

Senator SASSER. Do you feel any pain if you would walk from here to the end of this hearing room?

Mr. WILLIAMS. I have had pain ever since I have been here this morning.

Senator SASSER. You have had a heart pain ever since you have been here this morning?

Mr. WILLIAMS. This morning.

Senator SASSER. Have you taken any nitroglycerin tablets?

Mr. WILLIAMS. I took one on my way up this morning.

Senator SASSER. You took a nitroglycerin tablet on your way up to this table to testify?

Mr. WILLIAMS. No, sir. I took one on my way up to the floor from the bottom floor.

Senator SASSER. I see.

And have they given you an electrocardiogram other than this one in which you said it did not feel like that got an accurate reading?

Mr. WILLIAMS. Yes, sir. I have had some from a lot of different doctors.

Senator SASSER. All right.

Mr. Williams, it sounds to me like just sitting here listening to you, Mr. Williams, that you have got a pretty advanced case of angina along with a number of other things.

Thanks for coming here this morning and giving us the benefit of your views.

Anything you would like to add, counselor?

Ms. DENNIS. Not at this time, Senator. Thank you.

Senator SASSER. All right.

Our next witness is Karen Dennis.

I might say for the record this morning, Ms. Dennis, we appreciate you coming and testifying. Ms. Dennis is a practicing attorney here in Memphis for the Legal Services Office. She has worked for Legal Services for more than 6 years, and has handled approximately 200 social security disability cases. She is a graduate of the University of Tennessee Law School in 1978. And, Ms. Dennis, if you would give us your testimony this morning, please.

STATEMENT OF KAREN P. DENNIS, ATTORNEY, MEMPHIS AREA LEGAL SERVICES, INC.

Ms. DENNIS. Thank you, Senator.

I have prepared a written copy of this in somewhat more detail.[1] I do not know how many copies you need.

[1] See p. 60.

I would like to focus on just one or two areas. Although I am very pleased by the drift of the bill you have submitted, I think it goes a long way toward solving a lot of the problems that I have seen in the disability process in about the 6 years that I have been practicing.

Since March 1981, I can only describe what has occurred in terms of termination as a nightmare. Our offices have been unable to cope with the sheer numbers of persons who have been suffering terminations of their benefits and been forced to refer a number of people out. We have been lucky enough to have people in the private bar display a willingness to become acquainted with social security and to assist.

PERFORMANCE HAS BECOME ABYSMAL

My experience with, particularly the State agency level of decision-making and Social Security Administration is they have never been better than perfunctory. And since the March 1981 commencement of mass termination, their performance has become abysmal. I have in particular in mind the case of a client of mine who was originally found eligible for benefits in 1979 as a result of lupus. And systemic lupus erythematosus is a multiple body system disorder. It can attack any number of body systems more than once often. It is often fatal. It generally has a pattern of remissions and exacerbations. But, in my client's case, she suffered from pulmonary involvement that was almost unremitting. Slowing of her joints, extreme fatigue and weakness, and over the last year and a half had developed a rather nasty syndrome called Sjogren's syndrome, spelled S-j-o-g-r-e-n's, which resulted in chronic dryness of the eyes and mouth. And because of the lack of tears in the eyes, she suffered from almost constant lacerations of both corneas, causing intense pain, as you might imagine, and sensitivity to light.

When she told me that she had been contacted and that her case was going to be reviewed, I determined that I would assist her at this very early level, although that is unusual because I felt by providing sufficient records, we could keep her from being cut off and not have to go through the appeals process. And I set about to acquire the records. I got substantial records from the ophthalmologist who was treating her for the eye disorder, indicating quite clearly that this was a chronic, debilitating syndrome, that it could never be cured. It could only be palliated and only partially by surgery and eye drops and such. And that she would suffer it for the rest of her life, and that the pain itself would be debilitating.

In addition, I was able to obtain some records from her treating physician, her primary treating physician for the lupus, who indicated that her pulmonary involvement was almost constant. That she had allergies to aspirin and other antiinflammatory drugs which are necessary to treat slowing of the joints and so on, so that it was very difficult to find a medication that would assist her in getting some relief from the swelling and pain, while not causing allergic reaction that would cause additional problems. And that it was his feeling that not only she had not improved but, because of the problem with her eyes, she was probaly a lot worse now.

All of this evidence and evidence from a local mental health center that has been treating her for depression was mailed to the disability

examiner in Nashville. And while I was in the process of carrying on a correspondence with the disability examiner, an unfavorable decision terminating her benefits was issued. We immediately requested reconsideration, continued to send in records, and again the cessation determination was affirmed.

Senator SASSER. You mean even with all of this wrong with this woman, they terminated her disability benefits?

Ms. DENNIS. Yes, sir.

And I was certain this time at least that the disease prophecies had been well documented by physicians.

NONEXAMINING DOCTORS GAVE ONLY CONTRADICTORY OPINIONS

Moreover, Senator, no attempt was made to obtain consulting examinations in this case. They relied solely on the opinions of treating physicians and nonexamining doctors in Nashville. The only contradictory opinions came from the nonexamining doctors in Nashville. And I am sure you are aware, the courts refuse to give weight to the opinions of nonexamining physicians and will not find that there are substantial evidence to uphold the Secretary's decision in the case if that is the only contradictory evidence that there is.

So this is, among other things, illustrates the problem of nonacquiescence and refusal of the Secretary to abide by the court's decisions and to incorporate those court decisions into the standards that she uses for evaluating impairments. In addition, this case is an excellent example——

Senator SASSER. Now, when you say nonacquiescence, Ms. Dennis, what you are saying is if there is an adjudication in one particular case, that the Social Security Administration or the Secretary failed to act correctly, that does not fall over into the next case. In other words, you have to take each case on its own.

Ms. DENNIS. That is correct, sir.

Senator SASSER. In other words, what we are saying is if the Social Security Administration is adjudged incorrect or wrong on one particular disability evaluation, rather than learning from that, what the Social Security Administration is doing is making each individual claimant come up and reprove the whole process all over again.

Ms. DENNIS. In essence, Senator, that is what is happening.

Senator SASSER. That is what our legislation--one of the things we are trying to attack.

Ms. DENNIS. Yes, Senator. And I am pleased to see it.

This case is also an excellent example of the need for medical improvement standards, which you have incorporated in the legislation.

Clearly, Ms. Jefferson, under whatever standard for medical improvement is eventualy adopted, she clearly showed that her condition continued, had not improved and had, in fact, worsened and had such an improvement standard been incorporated into the Social Security Administration evaluation standards, I would estimate that her case would have been reviewed and disposed of in her favor within 2 months with the minimal administrative costs.

Instead, what we had was approximately 1 year from the time that she was first notified that they were going to reconsider her disability until the time that the administrative law judge actually issued the decision continuing her benefits.

Now, I might also point out, Senator, that this woman was the sole support when she was originally allowed, she was the sole support of two teen-age daughters. One of them has since left home. But her only source of income was social security. She has one teen-age daughter now at home, who would be over the age that would leave her eligible for AFDC, so had she not been eligible for continued benefits on appeal, she would have lost her only source of income for a good 6 months or more. I cannot——

PAYMENTS SHOULD BE RECEIVED DURING APPELLATE PROCESS

Senator SASSER. That is one of the injustices we are trying to address here. When they are adjudged—when they take them off the disability rolls and we get into the business of utilizing the appellate process, as you know, almost a half a million people have been taken off the social security disability rolls over the past 2 years. Of that, half a million people or 447,000 to be precise, somewhere between 60 and 70 percent were placed back on the social security rolls by administrative law judges once they reviewed their records. They upheld the original determination that these individuals were indeed disabled pursuant to law. But the injustice that is being done to that 60 to 70 percent that are put back on is that during the entire appellate process many of them have been receiving no disability payments at all, and the appellate process can go on for well over 1 year, in some cases. And I am stating this because I want everybody to hear me and know it. This has resulted in grave injustices. There have been individuals who, out of despair, have committed suicide. All sorts of horror stories.

An individual in Chattanooga who was taken off and judged disabled, a particularly blatant case, taken off the disability rolls, had no means of income whatsoever while his appeal had been processed. And, finally, for a period of almost 6 months, lived in the basement of his minister's home. That is the only place the man had to live. And fortunately his minister had the charity of taking him in and letting him live in the basement. That is what we have been up against, but I did not want to interrupt you.

Go ahead, but I think it is important to be graphic and point out the necessity of these people continuing to receive disability payments through the appellate process. Particularly when you got a situation where 60 to 70 percent of them are adjudged disabled, when you conclude the disability process.

Ms. DENNIS. Senator——

Senator SASSER. And that is what makes you smell a rat about the whole situation. In other words, it is what has made me think from the very outset, somewhere down in the bowels of the Social Security Administration somebody may have been setting quotas for the number of people that needed to be taken off these rolls.

Now, we had a General Accounting Office study of that. We received a tip that that was occurring here in Memphis. An anonymous tip from a social security person who alleged that they were working in the Social Security Administration office here. We sent the General Accounting Office down here to undertake a comprehensive examination, but I must say in all candor that the GAO was unable to con-

strue that there were indeed quotas being set and nobody would come forward and say that when they arrived here. But we did receive that anonymous tip. And in view of the great number of nearly half a million people who have been shoved off the disability rolls, the conclusion that there is some pressure to get a certain number off is almost inescapable.

Let me ask you some questions here, Ms. Dennis.

REVIEW PROCESS MORE DEVASTATING TO MENTALLY IMPAIRED

In your experience, which covers nearly 200 social security disability cases, have you witnessed the treatment of mental impairment cases under the current disability review process, and would you say that, in your experience in the current process, this proportionately works to the disadvantage of these mental disability cases?

Ms. DENNIS. To their disadvantage?

Senator SASSER. Yes.

Ms. DENNIS. Senator, I would state emphatically yes.

Senator SASSER. Tell us how that is the case.

Ms. DENNIS. Probably almost half of the cases that I have handled out of the office have involved persons with mental impairments. And first I think it is important that people understand how much more devastating it can be for someone with a mental impairment to suddenly receive word that their benefits were being cut off.

Physical—people who are physically impaired are obviously under a great deal of stress. Persons who are mentally impaired have had their coping mechanism, their ability to get up and go about in the world, those mechanisms themselves are weakened and destroyed by their illness. So that to have someone send to you saying I am going to cut off your only means of support through a system that they do not understand in large measure is a devastating experience.

I am personally familiar with cases of persons who either did not understand the process and failed to appeal and came to me later, and I was able to maneuver through procedures to get them back in the appeals process. Other people who when they received their cutoffs did not understand that they had time to obtain benefits pending the hearing. And persons who have had their benefits cut off at some level or another who left treatment, who relapsed in one way or the other, who wound up back in the hospital. I have had clients who refused to leave their apartments for weeks and months at a time because of the emotional impact of having their support cut off.

Now, I want to make it very clear that these are people who are deserving of disability benefits. Frankly, I have seen very few cases in all of my experiences of persons who were malingering, and they have been shown the door.

Senator SASSER. In your work experience, Ms. Dennis, what percentage of the malingerers have you encountered? By that, I mean in the number of cases that you have processed, could you give us an estimation of the percentage that in your subjective view would be malingerers?

Ms. DENNIS. Of the nearly 200 cases I have had, I would say I could count the number of people on the fingers of one hand and have fingers left over.

Senator SASSER. So are you telling us less than 5 percent?

Ms. DENNIS. Less than 1 percent.

Senator SASSER. Of course, we have no sympathy with those who seek these benefits who are not entitled to them. And if they are not entitled, certainly they ought not to get them.

SYSTEM FOR EVALUATING MENTAL IMPAIRMENT SHOULD BE REDONE

Ms. DENNIS. The peculiar thing with mental impairment, Senator, is that so much of the diagnosis in mental illness relies upon subjective determinations. Obviously, most of your test data is actually based upon context with the impaired individual. And as a consequence, mental illness is not very well understood, and that includes by the people who make the evaluations of the social society. If someone then, because of their mental illness, makes it apparent that they cannot relate to other people that they cannot go out and work, that they are afraid to, whatever it is that they are subjectively conveying to these people, that is taken to mean that they have no motivation.

Despite the fact that you have psychiatrists and psychologists saying that motivation is not the factor, we are talking about a diseased thought process or a diseased emotional process. This entire system for evaluating mental impairment has to be redone.

In addition, the Social Security Administration has got to put more stock in evidence that is supplied by treating personnel in mental impairment cases. If there is injustice in allowing a consultant to have great weight in determining whether a physically impaired individual will be cut off, the injustice is magnified a hundredfold when it happens with mentally impaired individuals.

When a consultant sees an individual who is mentally impaired for 1 hour or less, little or no familiarity with that person's prior hospitalization record or treatment record, I do not think I have to tell you how difficult it could be for that person to reach a proper diagnosis. And when you have treating personnel who see mentally impaired individuals over long periods of time which are often necessary to reach a proper diagnosis in mental illness and those persons' opinions are being ignored, in favor of someone who saw someone possibly during their only good hour in the last month, and that is being used as a basis to terminate their benefits. It is simply a criminal act in my opinion. I have seen people driven to desperation. And improperly so.

And if I get somewhat hot about it, it is because I watched this happen time and time again, and I do not want to see it happen any more. I would be thrilled if I could have less to do in this area in the near future because the standards were redone so that they more fairly and equitably administer the disability act for mentally impaired individuals.

But, again, I think that is going to require a total overhaul, not only in the listings but in the standards used for evaluations overall.

Senator SASSER. In the current proposal we stand for that, as you know.

Ms. DENNIS. Yes.

Senator SASSER. Ms. Dennis, I want to thank you for appearing here this morning and giving us the benefit of your views. Your entire

statement will be incorporated in the record as if read. We are going to have to move forward this morning because we are under time restraints and have other witnesses waiting.

Thank you very much.

Ms. DENNIS. Thank you, Senator.

[The prepared statement of Ms. Dennis follows:]

PREPARED STATEMENT OF KAREN P. DENNIS, ATTORNEY AT LAW, MEMPHIS AREA LEGAL SERVICES, INC.

I am Karen P. Dennis, attorney with Memphis Area Legal Services. At present, I am the unit director of the "General Law" unit, which handles all public benefits cases including Social Security and SSI disability. Over the past six years I have handled nearly two hundred Social Security cases in which disability was at issue.

THE REVIEWING PROCESS AS CARRIED OUT BY SSA AND DDS

In my experience the performance of the state agency (DDS) charged with making disability decisions at the initial and reconsideration levels, has never been better than perfunctory. Since March 1981, however, the agency's cessation decisions have been increasingly based upon thoroughly inadequate reviews; upon either arbitrary exclusion of relevant evidence or capricious editing of evidence favorable to claimants, in order to justify terminating benefits to obviously eligible individuals. The "rationales" supplied to recipients by DDS to explain their determinations more often than not explain nothing (e.g. "you were critically [sic] awarded benefits because of lupus. You say that you are still unable to work because of lupus and nerves. Medical evidence shows your conditions no longer meets or equals [sic] the requirement for disability.")

As an illustration of my complaints about the current system, I will document one cessation case which I recently

won for a client at the hearing level. Vivian Jefferson was initially found disabled as of August 22, 1979 because she suffers from systemic lupus erythematosus. Lupus is a complex disease which may attack one or more body systems and is often fatal. In Ms. Jefferson's case, her symptoms include pain and swelling in her joints, skin lesions, unremitting pulmonary involvement, and extreme fatigue. She suffers from dysthymic disorder (depression) which at the least has been exacerbated by her illness. In the last year, she has also been plagued by Sjogren's syndrome, a companion to lupus which causes dryness of the mouth and eyes. Among other things this syndrome causes chronic, painful irritation of the corneas and sensitivity to light, which cannot be cured and can be only partially palliated by surgery and eye drops.

Ms. Jefferson left a good job as a food services cashier at the University of Tennessee Center for the Health Sciences in August 1979 on her doctor's advice. She was sole support of two teenage daughters (one has since married and left home). But for the recent action allowing Social Security recipients continued benefits until the hearing decision is issued, Ms. Jefferson would have suffered the loss of her only source of income for her daughter and herself, for at least six months.

When Ms. Jefferson learned that her case was being reviewed, she contacted me. I had assisted her in obtaining

34-198 O - 84 - 5

benefits originally, and maintained regular contact with her thereafter. I agreed to assist her prior to the hearing level because I believed that by providing sufficient evidence we could prevent cutoff altogether. Consequently, I contacted DDS examiner, Brenda Briggs, in early March 1983. I advised that Ms. Jefferson had recently been hospitalized and that I would assist in obtaining medical records. On April 12, 1983, I wrote to Ms. Briggs enclosing a letter from Dr. Audrey Tuberville regarding Ms. Jefferson's eye condition. On April 19, 1983, I sent records from U. T. Hospital and Frayser-Millington Mental Health Center, and advised that I would forward whatever I received from Dr. Gupta, (Ms. Jefferson's primary treating physician). On April 29, 1983, a decision issued finding Ms. Jefferson capable of substantial gainful work as of April 1983.

We immediately filed a Request for Reconsideration, including letters from Dr. Gupta and Dr. Tuberville. On May 23, 1983 yet another letter from Dr. Tuberville was mailed by me to Social Security and Dr. Gupta supplied comprehensive additional information as well. Nevertheless, by form letter dated July 20, 1983, the cessation decision was affirmed. No mention was made in the "Explanation of Determination" of Ms. Jefferson's pulmonary fibrosis, her allergy to aspirin and other anti-inflammatory drugs used to treat this illness, nor her severe bilateral chronic dry eye syndrome, although all of these problems were well documented by treating physicians

numerous times during the initial and reconsideration processes and absolutely no contradictory evidence was solicited or received.

At her hearing, which was brief, the claimant testified, among other things, that she had to sit with her eyes closed most of the day because of the discomfort caused by Sjogren's syndrome. On January 21, 1984, Judge O'Leary issued a favorable decision continuing Ms. Jefferson's benefits.

Ms. Jefferson thus became part of the 60% (or more) of claimants whose cases are reversed in their favor by administrative law judges. I do not know the cost of holding an administrative hearing, but must assume that it is not insubstantial. The blame for this waste of resources must be laid squarely at the feet of the Social Security Administration. Because the SSA refuses to follow court decisions in developing standards for the DDS offices to follow, great injustices are done every day both on new claims and in continuation cases. The courts have stated that the opinions of treating physicians are entitled to great weight, that in the absence of contradictory evidence such opinions supporting disability findings must be accepted, and that opinions by non-examining DDS physicians cannot alone, support, a finding of non-disability. These rulings are fair and common-sense approaches to the problems presented by a program which seeks to evaluate disability - a subjective concept. Yet, in Ms. Jefferson's case and

multitudes of others, although treating physicians provided opinions supported by clinical data, observations, diagnoses and prognoses; and those opinions were uncontradicted by any but non-examining DDS physicians, the decision that disability had ceased was nevertheless made, and affirmed on reconsideration.

Courts have said that, in cessation cases, if the originally disabling condition continues, the burden of going forward shifts to the Secretary to show improvement. Ms. Jefferson amply proved that her impairment continued, and the Secretary failed to show any improvement. Yet the cessation decision issued, and was upheld on "reconsideration". From the time that the continuing disability investigation began until the ALJ issued his decision continuing benefits in Ms. Jefferson's case, the review process took up nearly twelve months of the SSA's time and resources. Given adherence to appropriate standards by properly trained personnel, her case could have been decided by DDS in two months or less, with minimal administrative cost.

I do not mean to suggest that disability benefits should never be terminated. There are a large number of physical and mental impairments which can be expected to improve after a period of time, and SSA is right to monitor those cases to determine which claimants have regained their ability to work. But to make decisions to cut benefits to persons with chronic, degenerative illnesses, or with

lifetime intellectual impairments without any evidence of renewed ability to work is criminal. A medical improvement standard is fair and sensible. The current "standard" is neither.

MENTAL IMPAIRMENTS

Claimants with mental illnesses present special problems. As the Senator is aware, much criticism has been levelled at SSA for its evaluation of mental impairments. The "listings" do not reflect current diagnostic and therapeutic terminology and techniques. Moreover, until very recently, no attempts have been made to evaluate the vocational capabilities of those claimants who do not meet the listings. Even now, this occurs only at the ALJ level, and is not done consistently.

Mental impairments present a very different evaluation problem from physical impairments. If, for example, someone has had a stroke causing loss of use of one leg and weakness in one hand, it is easy to see how that person could be disabled. If, however, someone suffers from a mental disorder which restricts that person's ability to relate to others, to handle normal work pressures, to understand and carry out instructions, to communicate effectively, or the like, the system breaks down. Admittedly, subjective determinations are involved to an extent. But claimants who receive regular mental health care are treated by trained personnel: psychiatrists,

psychologists, psychiatric social workers, pharmacists. Such personnel are accustomed to making diagnoses based primarily upon direct contact with the individual patients over a period of time. Their reports of contact are the clinical data which support the diagnoses. Yet, the Social Security Administration routinely ignores reports from long-time treatment personnel in mental impairment cases, or complains that they lack "clinical data".

To illustrate how poorly the system responds to psychiatric patients, consider the case of Ricky K, whose case for continued benefits has been appealed to federal district court. Mr. K was originally awarded benefits as of March 1976 due to schizophrenia. He is now twenty-seven, and is a participant in Adult Day Treatment at a local mental health center five hours a day, five days a week. A psychologist who supervises the day treatment program testified at Mr. K's hearing before an administrative law judge. She described, at length, the aims and methods of adult day treatment. She emphasized that an attempt to place Mr. K in a vocational rehabilitation program several months before had been unsuccessful, that Mr. K had not been able to handle the pressure of the Goodwill Industries program, and had in fact suffered a relapse. She noted that Mr. K was still considered to be a good candidate for rehabilitation and that with attention and care he could function in outside employment. They were planning to enroll him at Lowenstein

House, a rehabilitation program specifically geared to the mentally-impaired, within a few months, in hopes that he could return to gainful activity in another year or two. But, the psychologist was careful to say, Mr. K is not ready for outside employment yet. Written evidence from Mr. K's treating psychiatrist supports this: "he needs low pressure situations, structure and a lot of facilitation and support from therapeutic personnel to function. Overall his condition has improved since hospital discharge but he still remains handicapped." Mr. K continues to receive bi-weekly shots of Prolixin to control psychotic symptoms and takes daily medication to control depression and side effe.ts.

Because the listing of mental impairments is so restrictive, Mr. K's condition likely does not meet the listings now. However, the ALJ made no attempt to evaluate Mr. K's vocational capabilities, and he ignored uncontradicted evidence form therapeutic personnel who see Mr. K every weekday for five hours a day, who state emphatically that Mr. K is not yet ready for employment.

The failure of SSA to promulgate listings which reflect current diagnostic techniques, terminology and treatment, and prognoses; and provide trained personnel to evaluate the records received has made it virtually impossible for mentally-impaired individuals to "meet the listings". And because mental illness is so poorly understood, because sensible guidelines for evaluating the

vocational capacities of the mentally ill are not in place at any level of the system, large numbers of the mentally disabled are being denied benefits or having their benefits terminated unjustly.

Imagine the effect that termination of benefits has upon an individual whose coping mechanisms are already weakened or destroyed by mental illness. Many, in my experience, suffer crises which are directly related to the threat of cessation of benefits. Mr. K, in fact, suffered a relapse following receipt of the unfavorable decision from the ALJ, and refused to leave his apartment for a time. Fortunately, he is back in adult day treatment now.

A moratorium on mental impairment reviews is imperative. The SSA must revise its listings, train its personnel to better understand mental illness, hire more psychiatrists and psychologists to review cases, and issue sensible guidelines for evaluating vocational capabilities. Its reliance on "one-shot" consultants in mental impairment cases must also be lessened. If a claimant receives regular mental health care, the opinion of a consultant who sees the claimant once, for one hour or less, and has no familiarity with the claimant's case, should not be considered sufficient contradictory evidence to justify denial or cessation of benefits. Yet, time and again, this is what happens.

CONCLUSION

In conclusion, I wholly endorse the provisions of the proposed legislation and I do so having had six years' hands-on experience with the present system for determining disability. I have seen grave injustice done to persons suffering from all manner of handicap. I can still count the number of "undeserving" beneficiaries on the fingers of one hand. I have seen claimants lose their Social Security benefits pending appeal, who were not reinstated until a year or more later. The lump sum received then could not ever compensate for the prior months spent dealing with inability to obtain needed medication, threatened repossessions, foreclosures and suits to judgment on debts that could no longer be paid, utility cutoffs, and the like. There is no compensation for the anguish caused to recipients and their families in these cases. The best we can do is structure the system so that it is administered reasonably and fairly. I believe that S.2002 and H.R. 3755 are giant steps in the right direction.

Respectfully submitted,

Karen P. Dennis

KAREN P. DENNIS
Memphis Area Legal Services, Inc.
Suite 1000, Municipal Square Bldg.
161 Jefferson Avenue
Memphis, Tennessee 38103-2363
(901) 522-2915

Dated: March 14, 1984

Senator SASSER. Our next witness this morning is Judge Graves.

Judge, if you would be good enough to come forth. Welcome, Judge, and have a seat, please, sir.

STATEMENT OF HON. HUBERT GRAVES, ADMINISTRATIVE LAW JUDGE, BUREAU OF HEARINGS AND APPEALS

Judge GRAVES. Thank you, sir.

Senator SASSER. Judge Graves, I might say by way of introduction in the record here, and to those in the hearing room, you are currently the administrative law judge in charge here in the Memphis Office of Hearings and Appeals.

Judge Graves received his law degree from the University of Arkansas in 1961. And prior to becoming an administrative law judge, he was a practicing attorney in the areas of personal injury and Workmen's Compensation. He has been an administrative law judge since 1977 and, as I said earlier, is the Chief ALJ in the Memphis office.

Judge, welcome this morning, and I want to commend you for the good work you and many of your colleagues in your Administrative Law Judge office here in Memphis and all across the country are rendering, and would be interested in getting your views and any statements you might like to make this morning.

Judge GRAVES. I did not prepare a statement as such. I talked with Mr. Simmens, and I understood there were certain questions you wanted me to respond to.

Senator SASSER. Yes, sir, that is correct. I thought maybe if there is anything you want to get off your chest at the beginning, we will let you do that, but if not, we will just roll right into the questions.

Judge, as you heard me say earlier, in 1982, the spring of 1982, I received an anonymous letter from a constituent here in Memphis, alleging that the Social Security Administration was working under a so-called quota system. The quota system determined who would be kicked off the social security disability rolls.

Now, I instructed the General Accounting Office in Washington to investigate this allegation and the final report, although unable to prove a formal quota system did exist, revealed some rather interesting conclusions anyway.

My question to you, Judge, is whether in your experience or estimation, you have come across instances which would indicate to you some quotas in either the Social Security Administration or in your capacity as administrative law judge?

MEMORANDUM INDICATES PERFORMANCE APPRAISAL IS USED

Judge GRAVES. Let me say first as far as the Social Security Administration system is concerned, anything that I would know would be secondhard. I did see a memorandum some 2 years ago, but I am not sure what it had to do with exactly. I believe it was from another member of the Administrative Law Judges Association.

Anyway, they stated in there that the people in the State Agency making the determination, of course, as you know, have a performance appraisal every year, which judges, of course, do not. It is my understanding that they are rated, that in rating them in this performance

appraisal, 10 percent of their unfavorable decisions are reviewed whereas 100 percent of the favorables are reviewed. Which, of course, would lead, if it is true, which, of course, I do not know, would lead to the conclusion that you reduce your error rate tremendously by finding unfavorably as opposed to favorable.

Senator SASSER. In other words, this examiner, when they are evaluating his or her performance, they only look at 10 percent of the unfavorable ones as they would the favorable ones?

Judge GRAVES. This is what I understood from the memorandum. Again I do not have firsthand knowledge of it.

Senator SASSER. So just by playing the odds here, if you come up with more unfavorable determinations, then your chances of being adjudged correct by your superior as far as rating your performance, is much better.

Judge, there is a provision of the legislation that I have introduced in conjunction with my colleagues, Senator Pryor of Arkansas and Senator Moynihan of New York, which requires the Social Security Administration to either apply the decisions of the circuit court of appeals to at least all beneficiaries residing in the State within the circuit, or appeal the decisions to the Supreme Court. This provision deals with the so-called nonacquiescence of the Social Security Administration as regards circuit court decisions.

Now, would you please comment on the current disability review process and how provision would improve the process.

That is sort of a complicated procedural question, but for the purpose of the laymen here in the hearing room, nonacquiescence means that you simply have to start all over again with each case.

Judge GRAVES. Well, in effect, of course, the rule within law of staredecisis, you follow the decision, prior decisions of the court on the same issue.

Now, that is if a claimant were to win an appeal and settle a particular point in favor of claimant, then other claimants theoretically would not have to litigate it because the lower level that follow that decision would then rule in his favor.

Senator SASSER. In other words, to simplify this, people like myself who may find it a little complicated, if you had a court to rule that a certain, let us say, you have got a degenerative disc disease of the spine, and that is in and of itself a disabling condition. You had a circuit court rule that. If you applied the concept of stare decisis, that means that every other claimant who came forward with that particular disease, would automatically be ruled disabled?

Judge GRAVES. You would apply——

EVERY CLAIMANT MUST PROVE HIS DISABILITY

Senator SASSER. What the Social Security Administration is doing is making each one of them go to court and prove that, indeed, this degenerative disc disease is disabling. Is that a fair characterization of it, Judge?

Judge GRAVES. Yes, I think it is, yes, sir.

It makes it difficult for a person trying to apply the court decision because, say, an administrative law judge reads the court decision and sees that, say, this circuit or this district court has ruled in a

certain way, then your tendency, like any attorney or any attorney preparing a case, would be to try to follow that decision in his preparation or us, say, in our decision. And, of course, it is a matter you are told that we do not acquiesce in that so we do not follow it. It would mean that each and every claimant would have to go all the way to the circuit court or to the district court.

Senator SASSER. It means that each and every claimant has to go through the legal expense of litigating a particular issue that has already been decided in previous litigation?

Judge GRAVES. Right.

Senator SASSER. And that is in the final analysis, an effort on the part, not an effort but a step that is taken by the Secretary and the Social Security Administration, in my judgment, to unfairly front-end load the appellate process to the disadvantage of the claimant.

Now, you do not have to comment on that, Judge, but that is my determination.

Judge GRAVES. We are told that they would follow the Supreme Court decision to say no to circuit or district court but, of course, if they lose, since a winner cannot appeal, the only person who could appeal the decision for social security laws would be Social Security Administration.

If they do not appeal, there would never be a U.S. Supreme Court decision.

Senator SASSER. In other words, the burden of proof is on the claimant all the way up and down the line?

Judge GRAVES. He cannot get there if he wins the case, there is no way for him to go on to appeal further.

Senator SASSER. Now, does this practice lead to differences among the various 50 States regarding circuit court decisions? For example. is there different treatment in the different States leading to nonuniformity?

Judge GRAVES. Yes, there is. Of course, that is true with law in general. You know, I mean that is not just true with social security. It is true in any form of litigation that there are different circuits. Maybe circuits going up in the directions and then appealed to the U.S. Supreme Court to resolve it. But there is nothing unusual about it. I mean, this is a common thing.

Senator SASSER. But is it not more pronounced in this particular situation?

Judge GRAVES. I really do not know.

Senator SASSER. You do not have the concept of stare decisis here or if you take something all the way to the Supreme Court and get a ruling, given this nonacquiescence doctrine that the Secretary found, you still do not get a resolution of the issue so you would have uniformity among the 50 States, would you?

Judge GRAVES. No.

Senator SASSER. You would have to go all the way to the Supreme Court again?

Judge GRAVES. Well, the Secretary would be the only one who could go to the Supreme Court under these circumstances.

Let me mention something you were talking about quotas a moment ago when we got off—when that got off. I mean we went on to something else.

Were you interested in quotas as far as judges are concerned.

JUDGES PUT UNDER REVIEW

Senator SASSER. Yes; I would be interested also to know whether or not there are quotas as far as judges are concerned.

Judge GRAVES. OK. There is a, as you may know, there is a lawsuit that was tried within the last week in D.C. between the Administrative Law Judges Association and the administration. One of the exhibits to that lawsuit when it was filed 1 year or so ago, has to do with the Belman review. And in effect what happened was that the judges who had reversal allowance rates were put under review, and their decisions were looked at whereas other people's decisions were not.

Now, one of the exhibits to this lawsuit was a memorandum, an internal memorandum of the administration having to do with once a judge got on review and his decisions were reviewed, how does he ever get off? One of the actions, and there were five or six actions given, one was for him to—for a period of either 1 to 3 months or some period, to allow no more than a certain quota like 54.6 or 57.8. I cannot recall the figures, but it was in this range.

Anyway, this was given as a goal, which actually, of course, most of us thought of as a quota. That document is an exhibit to the complaint in the lawsuit I just mentioned.

Senator SASSER. In other words, what is happening is the Social Security or administrative law judges at least in that area in Washington, if they have a high rate of reversing the denial of benefits that occurred at a lower examiner level, then the administrative law judge himself or herself is subject then to review. And by his or her superiors in the Social Security Administration, is that correct?

Judge GRAVES. That is true. What I spoke of was the way they would get off or it was a memorandum to decide how to ever get someone off.

Senator SASSER. In other words, if you want to play it safe, take them off the disability rolls because you are not going to be looked at as carefully.

Judge GRAVES. Well, that was the criteria for the review.

FACE-TO-FACE CONFRONTATION HELPS DECIDE CASES

Senator SASSER. Judge, do you think it is important for the disabled beneficiary to have the opportunity to present his or her case before the State Disability Reviewers at the earliest possible time?

Now, the reason I ask this is because in the legislation that we have introduced, there is a provision for a face-to-face evidentiary hearing at the initial level of decision. And do you think by moving this face-to-face process earlier in the process, we could avoid a significant number of cases from having to go to the next level of appeal almost as if following the old legal maxim you have a right to confront your accuser, perhaps the claimant would be in a better situation if early on in the hearing, the examiner actually had a face-to-face meeting?

Judge GRAVES. Let me say that I think the hearing in face-to-face confrontation does help a lot in deciding cases.

Senator SASSER. Why do you say that, Judge?

Judge GRAVES. Because all of us have had cases where you read the file before the hearing and would have the impression you are not going to decide that way, but you have in mind the person is not disabled maybe. You see them at the hearing, and your observation of

them plus their testimony, you are convinced otherwise, I would say that people who ask for an on the record decision, you know, rather than going to a hearing, they request a hearing, then say I will waive it and decide on the evidence of record. I would guess it is the reversal rate on those is a lot lower than where the person actually comes in. I think that in principal that is good, and what you are saying is good. I do not know whether it would be considered at that level or not, because I know that their standards are different from ours. I understand they have very little discretion, and again it is something I do not know personally about.

It is my understanding, however, that they have fairly rigid rules as to what must be there in order to find a person disabled.

BENEFITS SHOULD NOT BE STOPPED BEFORE FINAL DECISION

Senator SASSER. Judge, one final question.

Since the passage of temporary legislation in 1982, disabled beneficiaries have been afforded continued payment of benefits through the administrative law judge level of appeal. In other words, if they are denied their benefits, judged not disabled, they want to appeal that denial, then since 1982, we passed stop-gap legislation to allow the disabled to draw the payments through the appellate process, at least up to the administrative law judge level of appeal.

The legislation that we propose would make this a permanent feature of the disability law. What I would like to get is your comments and your views down here where the rubber meets the road of just how important this provision is, and if you think it is important to continue payments at least up to the administrative law judge level. Also, would you relate some experiences that have come before your bench that would suggest that we should continue paying benefits through the appeals process?

Judge GRAVES. Well, let me say this, that when people are taken off of the rolls for any reason, once they have been adjudicated disabled, it seems to me that it is unfair to stop their benefits before they are able to get a final decision. That is, I mean, their benefits are stopped today, or if they could get a final decision tomorrow, of course, a lot of them would do it. But we all know that is impossible.

It is really a hardship on them if you are going to stop their benefits prior to a final adjudication that they are not disabled. I would think that the majority of the people that have seen their benefits cut off, I do not know any percentages, but I would say the vast majority, that is their sole income or that is the bulk of their income, and it would seem to me that once they have been adjudicated that they are disabled, then there should be a final decision.

Of course, to us, through the administrative law judge's level, it is not final. But it certainly is a lot further down the line than it would be if they were just cut off at the time the State agency makes a determination.

CASES OF INJUSTICE ARE NUMEROUS

Senator SASSER. Have you any cases that come to mind that have come before your bench in which there have been what you consider to be grave injustices or severe injustices or deprivations as a result

of the disability payments being terminated prior to getting to the administrative law judge level?

Judge GRAVES. There are—yes, I have known of a lot of cases. I recently cannot recall one specifically or anything, but I know—have known of a number of cases where people, for instance, were about to lose their homes. I mean we would get a lot of calls from people like maybe we would have the hearing, or even before we had it set for hearing, asking us to speed the process up because they were about to lose their home. Or we would get a call from the mortgage company wanting us to tell them could we tell them whether they would win or not so they would not foreclose or whatever they were going to do.

I do not know specific cases like that because that is not something we take up at the hearing really, and so I really am not able to tell you one particular incident.

Senator SASSER. Well, Judge Graves, I want to thank you, for appearing here this morning and your responses to our questions have been very helpful. You have a wealth of experience in this field, and we would like to feel free, those of us who are interested in this problem, to call upon your expertise and counsel in the future as we continue to try to fashion a legislative solution to this very acute national problem.

Thank you, Judge Graves.

Next I would like to call Mr. Donald Donati.

Mr. Donati is a practicing attorney here in Memphis, whose offices have dealt with over 100 disability cases over the past 3 years.

Mr. Donati, am I pronouncing that right?

Mr. DONATI. Donati.

Senator SASSER. He also received his law degree from the University of Tennessee in 1975. We have a lot of UT lawyers here today, and from 1975 to 1980 has worked in the Memphis Legal Services Office.

Mr. Donati, we would like to hear from you this morning, and you will be our concluding witness. If you have a brief opening statement, would you like to give it? If it is unduly lengthy, kindly summarize. We will put the whole statement in the record.

STATEMENT OF DONALD A. DONATI, ATTORNEY, DONATI, DONATI, ROBBINS & GOSNELL

Mr. DONATI. I will summarize an opening statement and submit it to Mr. Simmens within the next 2 or 3 days.[1]

Let me first tell you, Senator, thank you for inviting me on behalf of the clients we represent. The members of the law firm, we appreciate your concern and compassion, and we have to say publicly that we certainly appreciate the staff here in Memphis, your staff who has always provided us with the necessary assistance in representing people in social security disability cases.

As you mentioned, our office handled within the past 3 years approximately 100 to 150 social security or SSA disability cases. We have taken SSA cases, even though it does not mean a fee for us in many instances because of the fact there has been such a flood of cases. People have been terminated on an unjust basis. We also, along with

[1] See p. 77.

eight lawyers, in *Samuels* v. *Schweiker*, which is a classic example on behalf of disability recipients through litigation to remedy some of the abuses in the system.

Our experience has been, from working with these cases, that there is a clear and convincing pattern of abuse and error stemming from the Tennessee Department of Disability Determination.

There are specific instances of abuse, many of which had been summarized by you, or other witnesses. Some I want to briefly touch on.

DDS IS DEVOID OF DUE PROCESS

First is the entire DDS process. Basically, devoid of any type of due process, we have seen nothing but superficial reviews in most instances by the DDS examiners. Further, the use of the medical consultants, which are one-shot examinations by and large that are done without adequate histories, that are done without really any knowledge of the person's problem. And, further, many of these DDS consultant physicians depend solely on social security for their income.

I believe that they are in many instances biased because of their pecuniary interest in this process. Second, when the way the DDS has dealt with the concerns of treating physicians or the role of treating physicians, we have often seen DDS say when a treating physician submits a report, this is "not current," meaning that it is not within the past 3 or 6 months, even though the treating physician may have been treating the client for 6 to 10 years. They indicate that it is not current.

When the treating physician reports his findings, quite often the DDS does not give the treating physician the medical listing so the treating physician can determine what Social Security truly wants. Does Social Security want an appraisal program on arthritis that shows a sedimentation level that would indicate the person is per se disabled?

Further, it has been pointed out despite at least seven cases in this circuit, the DDS does not pull the rule in this circuit that the weight of a treating physician superior to that of a one-time consultant, the problem of nonacquiescence.

Further, another problem that we have seen is the problem with combination of impairments where a person has a multiple systems problem with six, seven, eight systems, more chronic disabling impairments, and DDS does not consider the combination of those impairments and the person's ability to work, despite countless cases throughout the various circuits, including this circuit, which require that.

It is a major problem for my associates in the national organization of social security claimants' representatives. They indicate to me that your bill, and the bill of Congressman Pickle, have the best opportunity of passage. It is my opinion that your bill will.

Senator SASSER. Chairman Pickle and I, as you know, are working together. He is working the House side.

Mr. DONATI. That your bill can address most of the major problems that we see and bring some sanity back to the system.

Senator SASSER. Thank you very much, Mr. Donati.

[The prepared statement of Mr. Donati follows:]

PREPARED STATEMENT OF DONALD A. DONATI, ATTORNEY, DONATI, DONATI, ROBBINS & GOSNELL

I am Donald A. Donati, a partner in the law firm of Donati, Donati, Robbins & Gosnell, in Memphis. I have praticed law involving representation of disabled clients since 1975. On behalf of the hundreds of disability clients that we have represented, who have fallen victim to the arbitrary treatment coming from the Social Security Administration and the State Disability Determination Agency, I would personally like to thank you for giving me this opportunity to speak about this most important issue.

I would further like to thank you fof your concern and compassion about this problem. I would also like to recgonize the competency and the kindness of your staff both in Memphis and Washington.

In our office, during the last three years, we have represented approximately 150 clients individually. Our office is co-counsel in a class action suit representing every disability insurance and S.S.I. beneficiary in the state of Tennessee. In the case of Samuels v. Schweiker, our office along with several lawyers throughout the state are attempting through litigation to remedy many of the abuses present in the disability determination process in this state.

From my experience, there can be no doubt that there is a clear and convincing pattern of abuse and error made in the disability process primarily caused by the state disability agency. From review of the cases that we have handled within the last year, nearly 75 percent of all continuing disability investigation cases were reversed by Administrative Law Judges. Many of the decisions of D.D.S. were clearly erroneous with respect to the 25 percent cases that have been lost. In many instances, the Administrative Law Judge appeared to

34-198 O - 84 - 6

rely upon recently adopted standards of Social Security which are illegal or clearly erroneous or the Judge makes an erroneous decision because of the huge volume of cases to be decided.

The principle reasons for the existencing crisis and the inhumane treatment of disabled Tennesseans can, in my opinion, be traced to several important factors:

(1) There has been a huge increase in the number of disability determination cases. This increase in disability cases has resulted in superficial review of the cases by tne state agency and decrease in the quality of the Adminstrative Law Judge.

(2) The D.D.S. Process has deteriorated into a completely arbitrary process which is devoid of minimum fairness and due process. D.D.S. often ignores all the evidence with the exception of the most recent consultative examination. The medical consultants provide one shot medical examinations which are often superficial and nearly always without an adequate medical history available. Many of these physicians depend substantially on the continued contract with D.D.S. in order to survive. Many are biased because of a personal and precuniary interest. Social Security has imposed no controls over the use these consultative examiners.

(3) In part because of the high volume of cases, D.D.S. often does not obtain adequate reports of the treating physicians. If a report of a treating physician is obtained, D.D.S. often does not consider it to be

"current" in that the treating physician had not done a complete examination with the appropriate clinical tests within the past year. When a treating physician's records is sought, D.D.S. rarely informs the physician of the type of medical information required and never gives the treating physician a copy of the regulations which set forth the medical listings of impairments. D.D.S. and Social Security also ignore the long precedent in the Sixth Circuit, Court of Appeals which requires that greater weight be given to the opinion report of the treating physician in relation to that of the paid for Social Security examining doctor.

(4) Social Security does not require that there be demonstration of medical improvement before ceisation can occur. Social Security has refused to impose a standard of showing medical improvement before a person can be terminated from disability. There is no doubt that Congress intended with the passage of the 1976 Amendments that a medical improvement standard be adopted. Indeed, in the Senate history, the language can be found that the purpose of the process is to end benefits "where his physical or mental impairment improves to the point whereby by reason of such improvement is now to engage in substantial, gainful activity." Clearly, Congress intended that there must be demonstration of medical improvement. However,

Social Security Administration, without the consent of Congress dropped from its policy in 1980, the requirement of medical improvement. Currently, Social Security expressly states "it is not necessary to show the individual's medical condition has improved since the prior determination". Social Security Rule in, 81-6 (January, 1981). The lack of this standard is a cruel and costly way of determining whether or not a person has ceased to be disabled.

(5) Finally, D.D.S. has consistently ignored the non-exertional mental impairments. During the past three months our office has been successful in restoring five claimants whose benefits were terminated by D.D.S. and who suffered from severe mental impairments. One individual who had been receiving disability benefits for six years because of a severe schizophrenic condition was cut off despite strong evidence by the mental health center confirming his severe impairment and despite the fact that during the past six years, on eight ocassions, including two involuntarily hospitalized.

These are just some of the more serious causes for the cruel and callous treatment received by thousands of your consituents. I have reviewed the legislation which you intend to offer for passage and can say equivocally that its passage will go a long way to improve the gross inhumanity suffered by your consituents. I also understand from my colleagues in the National Organization of Social Security Claimant Represenatives, that your Bill and that Bill introduced by

Congressman Pickle in the House has the best possibility of of passage. Thank for this opportunity to give this testimony. If we can be of any assistance to you or your staff in the future, please do not hesitate to contact us.

RESPECTFULLY SUBMITTED,

DONATI, DONATI, ROBBINS & GOSNELL

BY:_____

DONALD A. DONATI
Attorney at Law
66 N. Second Street
Memphis, TN 38103

Senator SASSER. Let me just ask you—you have handled a great number of social security disability cases. Would you just describe for this committee the worst case that you have come across that would, in your recollection, amplify and underscore the need for comprehensive disability reform?

Mr. DONATI. I think perhaps it is difficult to identify the worst case. There have been many, many bad cases. One in particular concern of mine, is during the past month we have had four favorable decisions from administrative law judges in our office.

One of the cases involved a schizophrenic who had been on disability, chronic psychiatric problem. He had been hospitalized on eight occasions. Three of the recent hospitalizations were what we know as involuntary commitment, meaning he had threatened someone to danger, to himself or others, and was committed through the process in probate court. We submitted records to DDS indicating this long history, along with psychiatric reports. Yet they continued to deny disability.

Fortunately, the administrative law judges, by and large, do an excellent job, did an excellent job in his case, which was reversed.

Another situation that has occurred with three clients, all three of whom are presently deceased. One, a Mr. Williams, another, Mr. Leonard, and another, Mr. Johnson. These individuals we felt had not improved at all as far as medical improvement. Their benefits were cut off. This was prior to the legislation where benefits pending after these various instances, after hearing, they obtained disability, but in two of the three instances, the individuals had died prior to receiving benefits.

LOSS OF MEDICARE A MAJOR PROBLEM

A major problem that occurs, that has not really been addressed, is that when a person loses their disability benefits, they lose their Medicare, by and large. They lose their source of income.

It becomes impossible for me, as a lawyer, to deal with doctors, and say, please examine this person now before the hearing, in order to determine whether or not they still need the listing, when the doctor says how am I going to be paid. This costs $350, or for medical records. The clients do not have the money. They go without not only their medical treatments, but also as a lawyer tries to present the best case possible. We are extremely handcuffed and prevented in doing that.

Senator SASSER. So the so-called safety net does not help these people?

Mr. DONATI. If anything, it pushes them off the safety net, like an assembly line. The determination was just erroneous in 1982.

The process, so benefits pending, I think is extremely important, because of the fact people have mentioned, because it allows a lawyer to assist in presenting the best possible case, through the use of the treating physician, and if necessary, additional expert testimony, or expert records.

So those, I guess, the individual is dying, I do not know if they can continue to receive the benefits if they continued to live, but I think those perhaps are the worst examples that we have seen.

Senator SASSER. Mr. Donati, thank you very much.

I do want to commend you for the good work that you and your colleagues have done in this field in the very critical years since 1981.

Thank you very much.

Once again, I want to thank all of the witnesses who contributed their time and energy to the conduct of these hearings today. And on behalf of the Senate Budget Committee, under whose auspices this hearing was held, this record will be transcribed, and will be examined and will be made part of the history and the formulation of the legislation that I am sponsoring.

What we are seeking to do is to fashion a legislative remedy for what have become gross inequities and gross injustices over the past 3 years, that have pushed almost a half a million social security disability beneficiaries from the rolls. We are shocked to see that, of this almost half a million people who have been denied social security disability benefits when their cases were reviewed by competent administrative law judges, that between 60 and 70 percent are adjudged to have been wrongfully deprived of their benefits under the laws of the United States.

Now, the social security disability amendments were passed by the Congress of the United States over a quarter of a century ago, signed into law by a Republican President, and those of us in positions of responsibility in the Congress, are not going to see this law flaunted, and are not going to see citizens of this country denied their statutory and constitutional rights by procedural distortions; and by procedural gimmicks, or any other effort, to deprive these disabled citizens of their legal rights.

Of course, no one wants to see anyone get disability payments, or any other payments, to which they are not entitled. And of course, those who seek social security disability payments ought to be subject to a review, and there ought to be a very scrupulous examination as to whether or not they are indeed entitled to these benefits.

But the system ought not to be front loaded against any of these beneficiaries who are poor, who are disabled, who have no recourse once they are adjudged to be disabled, and their benefits are being terminated.

Ladies and gentlemen, thank you very much for coming here this morning, and we appreciate all of the views of our witnesses. And let me just say if anyone here wishes to submit additional written testimony, or objections, they can submit such statements to my Memphis office, which is located in room 403 of the Federal Office Building, 169 North Main, prior to March 31, 1984. If they are received prior to March 31, they will be incorporated into the hearing record.

The hearing is adjourned.

Thank you.

[Whereupon, at 10:40 a.m., the committee was adjourned.]

SOCIAL SECURITY DISABILITY PROGRAM REFORM

FRIDAY, MARCH 16, 1984

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Nashville, Tenn.

The committee met, pursuant to notice, at 2:30 p.m., in room 29, Legislative Plaza, Nashville, Tenn., Hon. Jim Sasser presiding.

Present: Senator Sasser.

Staff present: Lance Simmens, legislative assistant.

OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. Good afternoon. I want to welcome all of you to these hearings today. The hearings here in Nashville are field hearings that are being held under the auspices of the Budget Committee of the U.S. Senate.

We are continuing this afternoon in Nashville, hearings that were begun this morning in Memphis, on the need for comprehensive reform of the social security disability process.

INJUSTICES OCCURRING IN SOCIAL SECURITY DISABILITY PROGRAM

Now, in listening to a great number of witnesses, both beneficiaries, judges and other experts, in Memphis this morning, my fears over the injustices occurring in the social security disability program, quite frankly, were confirmed.

I want to reiterate what I said this morning; that the purposes of these hearings are to gather information, not to point the finger of blame at any agency or at any particular individual. My major objective here today is to see for myself how the problems which are occurring nationwide affect disabled Tennesseans.

We know that on a nationwide basis over the past 2½ years, almost 500,000 beneficiaries, or those who have previously been adjudged disabled by the Social Security Administration as unable to do work, have been kicked off the disability rolls.

When these 500,000 beneficiaries have sought to go through the appeals process, to go to the courts, or go through the social security appellate process to reverse this judgment, between 60 and 70 percent of them have been found to be disabled for the purpose of the Social Security Disability Act, and their benefits have been reinstated.

The problem has been that during this period of appeal, literally hundreds of thousands of social security disability beneficiaries were wrongfully deprived of the benefits to which they were entitled. It has worked great injustices and great hardships. Many of them have been left absolutely destitute.

There are horror stories of some severely disabled individuals actually taking their own lives as a result of having their benefits wrongfully denied to them.

I think we all agree as Americans and as Tennesseans that of course no individual ought to have social security disability benefits that's not entitled to them. And of course, no malingerers ought to have these benefits. And of course, no one who failed to qualify under the law as being disabled should have these benefits.

But by the same token, it's been the established policy of this Government now for a quarter of a century that those who are disabled, unable to work through no fault of their own, if they have paid into the social security disability program, if they are adjudged disabled and unable to work, they are entitled to benefits.

So those are the problems that we're dealing with today.

BILL CONTAINS PROVISIONS FOR COMPREHENSIVE REFORM

I have offered a bill in the U.S. Senate, along with my colleagues, Senator Pryor of Arkansas and Senator Moynihan from New York, S. 2002, which contains provisions for comprehensive reform of the social security disability provisions. And it is hoped that this legislation will inject an essential element of fairness and equity into the disability system.

The changes contained in the legislation that we have introduced—and by the way, debate on this particular legislation will begin in the House of Representatives within 2 weeks, and is being cosponsored on the House side by Chairman Pickle—Representative Pickle of Texas—will include, No. 1, the permanent continuation of benefits through the appeals process up to and including the administrative law judge level so that those who are taken off the disability rolls, later adjudged to have been disabled, when they use their right to go through the appeal process, will continue to get their benefits while they appeal.

It will also call for the establishment of a medical improvement standard so that the burden of proof will be on the Social Security Administration to prove that a disabled individual's condition has actually medically improved before their benefits can be terminated.

It will call for revised standards for determining disability, and will provide for a face-to-face interview at the initial level of decision between the beneficiary and that person who is going to make the determination as to whether or not they are disabled, allowing the beneficiary to confront the person who will make the determination and let the examiner see the beneficiary so that he might have the benefit of discussing the beneficiary's complaints and judging by the beneficiary's demeanor and physical appearance if indeed that individual is disabled.

REFORM LONG OVERDUE

I have been actively involved in the issue of disability reform for some time now. Congress adopted some of the stop-gap provisions which I offered along with others last year. But now it is time for a permanent, long overdue reform of social security disability procedure.

I look forward to hearing testimony from the witnesses who are gathered here today. These are the people who are either directly af-

fected by the program or who deal directly with the people who are affected.

I might add that in preparation for these hearings, I invited the local directors of both the Nashville Social Security Office and the Memphis Social Security Office to appear here and testify. They were directed by the Social Security Administration in Washington not to appear and testify. I think that is unfortunate.

The Social Security Administration did offer to send someone down from Washington to testify, but I can talk to them in Washington. I wanted to hear down here in Tennessee, where the rubber meets the road with regard to this problem, what the local directors of the local offices have to say.

At this point, Congressman Pickle, the chairman of the House Subcommittee on Social Security has submitted a statement for these hearings which will be included in the record in toto as if read.

[The statement of Congressman Pickle follows:]

STATEMENT OF HON. J. J. PICKLE, A U.S. CONGRESSMAN FROM THE STATE OF TEXAS, AND CHAIRMAN OF THE SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS

I am pleased that Senator Sasser is holding hearings here in Nashville and Memphis on the very important issue of social security disability insurance. I look forward to working with him when our disability legislation, H.R. 3755, reaches the Senate, as I hope it will very soon. I hope that the bill will move to the House floor in the next few weeks, and I hope that it will be overwhelmingly approved. The problems of the disability program have occupied my subcommittee's time for almost a year now. We have put together a bill that will resove the problems we have heard about for the past two years, and will finally restore order and fairness to the social security disability program.

It is deeply disturbing to me that the Administration, after working with us last year to develop a responsible bill, has abandoned this cooperative process, and is now saying no legislation is necessary. I find this attitude regrettable. The disability program today is in chaos and the best way to restore an orderly process is to pass this legislation. I will continue to urge the Administration to reconsider, and to work with the Congress on this matter.

The Congress has focused on the disability program several times over the last six years to ensure that all those who are fairly entitled to benefits receive them. In 1980, our concerns led us to enact a requirement that SSA re-examine all beneficiaries periodically to make sure they are still eligible for benefits. This is a sensible, fair, and almost obvious administrative process, and the Congress did the right thing in requiring SSA to do it.

However, we left considerable leeway for the Administration to put this requirement into effect, and that's where the problems began. In 1981, this Administration, in order to get immediate budget savings, began the continuing disability reviews a year before they were required, and greatly accelerated the numbers of reviews. This too hasty and harsh implementation of a sensible legislative requirement has proven disastrous.

When we passed the bill in 1980, the continuing review provision was estimated to save $168 million in its fifth year of operation. Th current Administration estimate is $1.6 billion, almost 10 times the original estimate! During the past three years, over 400,000 beneficiaries have been told they are no longer eligible for benefits. Nearly two-thirds of those who appeal their termination have had their benefits restored, which is some indication of how many erroneous decisions have been made.

As a result of the CDR procedures used over the past three years, the entire social security disability program has been plunged into administrative chaos. In twenty states, the Federal courts have substituted a court-ordered standard of review for that called for by the Social Security Administration. In nine other states, the governors have declared a self-imposed moratorium on processing disability reviews. The Administration is now threatening sanctions against those States that do not comply with Federal standards.

The disability bill that our Subcommittee developed is a responsible solution. It establishes a sound and fair medical improvement standard, uniform national standards for decisions, continuation of benefits through appeal, and earlier face-to-face interviews with claimants at the state agencies, among other provisions. This legislation seems to us the only way to restore order to the process.

Yet we are told by the Administration that no legislation is necessary, and that the whole situation can be remedied by internal administrative reforms. I find that hard to believe, but I am willing to investigate it, and this hearing will aid the Congress in that process. We need to hear whether there are still problems with the program, and whether administrative action alone can resolve them. If, as I believe, the program is truly in a mess and enactment of our bill is the best route to solve that mess, that message must be sent loud and clear to the Administration.

Senator SASSER. Why don't we begin our hearings now.

Our first witness today will be Mrs. Marlene Fletcher.

Ms. Fletcher, if you will, kindly come forward and have a seat there. And Ms. Harrison, if you would assist her and perhaps seat her in front of the microphone, we will ask her some questions.

Welcome, Ms. Fletcher. And thank you for coming and appearing today.

Would you please state your name and age for the record, please.

STATEMENT OF MARLENE FLETCHER

Ms. FLETCHER. My name is Marlene Fletcher. I am 51 years old.

Senator SASSER. If you would, pull that microphone just a wee bit closer. And somebody make sure it's turned on there.

Now, Ms. Fletcher, would you state also the extent of your disability? Precisely how are you disabled?

Ms. FLETCHER. I have arthritis. My major disability is from the arthritis of the cervical spine. It has done permanent damage to the nerves and muscles in both of my arms.

Senator SASSER. Our records reveals that you have arthritis of the cervical spine, spondylosis, and the three vertebrae in your neck have grown together and there is no flexibility there. And it is required that you wear a cervical collar. Is that correct?

Ms. FLETCHER. Yes, sir. It is either two or three of them that are totally fused. And the one right above those has pulled loose and has abnormal movement and presses on the nerves.

Senator SASSER. Now, have you been examined by a physician employed by the Social Security Administration?

Ms. FLETCHER. Yes, sir. When I was first put on social security, I was examined by a neurologist.

Senator SASSER. When was that?

Ms. FLETCHER. That was in——

Senator SASSER. Roughly, if you can recall.

Ms. FLETCHER. 1976.

Senator SASSER. Were you adjudged disabled by that neurologist at that time?

Ms. FLETCHER. Yes, sir, I was. He agreed with my doctors completely.

Senator SASSER. When were you next examined by a social security physician?

Ms. FLETCHER. In 1981. That was an orthopedic surgeon. And he, without having any X-rays or knowing anything about my case, forced me to do movements with my neck and my arms that a neurologist, neurosuregon and rheumatologist all had told me not to do.

I tried to tell this man that I had been instructed not to do that, and he forced my head down, touching my chin to my chest, which I had been definitely told never to do; it could cause permanent damage.

He treated me like I was just dirt under his feet. Wouldn't even answer questions. When I said anything to him, he ignored me totally.

Senator SASSER. Did you feel that this doctor who examined you was familiar with your medical records?

Ms. FLETCHER. No, sir. I tried to tell him things, and he would shut me up, wouldn't answer me, ignored me.

Senator SASSER. Did he give you any indication during the course of the examination that he was familiar with your history or that he had reviewed your medical records or was familiar with your complaints?

Ms. FLETCHER. No, sir.

BENEFITS TERMINATED FOLLOWING EXAMINATION

Senator SASSER. Now, your benefits were terminated following this examination?

Ms. FLETCHER. Yes, it was.

Senator SASSER. Have you continued to receive benefits while you have appealed these termination hearings?

Ms. FLETCHER. No, sir.

Senator SASSER. In other words, you have been denied your benefits since some time in 1981.

Ms. FLETCHER. Yes, sir.

Senator SASSER. Has your medical condition improved at any point since you were first adjudged disabled in the 1970's?

Ms. FLETCHER. Unfortunately, once you have arthritis, you have it for the rest of your life. There is no cure for it. All they can do is keep you on medication to try to keep it from getting any worse, to keep it from spreading or getting any worse. But once you have it, that arthritis is there for the rest of your life.

Senator SASSER. The vertebrae in your neck, were they fused surgically, or were they fused themselves as a result of your disease, spondylo. How do you pronounce it?

Ms. FLETCHER. Spondylosis or spondylitis.

Senator SASSER. That is a degenerative condition of the vertebrae?

Ms. FLETCHER. Well, it is the kind of arthritis—have you ever seen anybody that their back gets real humped?

Senator SASSER. Yes.

Ms. FLETCHER. Well, that is the type of arthritis it is. The vertebrae fuse together and draw you forward.

PAIN IS PRESENT MOST OF THE TIME

Senator SASSER. Ms. Fletcher, is this a painful condition?

Ms. FLETCHER. Yes, sir.

Senator SASSER. Do you experience pain with it?

Ms. FLETCHER. Definitely.

Senator SASSER. Do you consider yourself to be in pain at this time or not?

Ms. FLETCHER. Yes; I am. There's very few times that—you have to learn to live with a certain amount of pain. There's very few times that I could tell anybody that I am not in pain.

Senator SASSER. Does this condition require medication? Do you take medicine for it?

Ms. FLETCHER. Yes, sir, I am supposed to take 25 milligrams of Indocin three to four times a day. And I have to wear the cervical collar other than when I am in bed at night.

Senator SASSER. This medication, what does it cost you a month?

Ms. FLETCHER. $25.17 for 100 capsules of the medication. The collars cost $13.34. You have to see a doctor. The doctor wants to see you every 30 days. Most doctors charge $20 a visit. They want to do a blood test at least every other month.

Senator SASSER. Did you work prior to being disabled?

Ms. FLETCHER. Yes, sir, I worked all my life. I raised two children by myself, supported them, never asked for ADC, or welfare or anything. I worked and earned my own way.

WOULD PREFER WORKING

Senator SASSER. Given the opportunity to work, would you prefer to work?

Ms. FLETCHER. I guess I can best answer that by saying when the doctors first told me that I could no longer be bent over a desk, I immediately went to Vocational Rehabilitation Services and asked them to train me how to do something else, because that was all that I knew.

So they told me I was eligible for their help, but they would have to get my medical records. As soon as they got my medical records, they sent me a letter saying they were sorry, that my medical condition did not lend itself to rehabilitation.

When I called them and asked them what they meant by that, they said, "Well, when you can't use your arms, there just isn't much of anything that we could train you to do."

But it would help my mental state 95 percent if I could work. I have always worked.

Senator SASSER. Now, Ms. Fletcher, how are you sustaining yourself, supporting yourself, getting your medication, paying for your food and your clothing, with the termination of your benefits? Do you have sources of outside income?

Ms. FLETCHER. Well, I lost my home. I've sold what jewelry I had. I've sold furniture. I've sold appliances. I've even sold family heirlooms that I expected some day to be able to pass on to my children. I have come to the point that I have nothing of value left.

So in December I decided there was no way that I could take care of myself. So I made up my mind to end it.

My daughter figured out what I had in mind, and she came and got me and took me to her house. I am now totally dependent on my daughter and my son-in-law. They have four children of their own. And in this day and age, you know what it is to take care of a family of six. They don't need an extra burden. But I have nothing else I can do.

I went to welfare. They told me that unfortunately I was too old to have dependent children, and I wasn't old enough to draw my regular social security, so there was nothing they could do. So evidently, people my age that can't take care of themselves are supposed to just live on the streets or starve.

NO MONEY FOR NEEDED MEDICATION

Senator SASSER. Are you appealing the action of the Social Security Administration in taking away your benefits?

Ms. FLETCHER. I am going to see what I can do about it. But I have no money. They told me that I would have to have those tests and all run again. I would have to go into the hospital and have the tests run, that they would not pay for it. I don't have any hospitalization. I have no money to even pay for my medicine, much less for hospitalization and the tests.

One of the tests that they ran on me, they stuck needles from my shoulders to my elbows. That was how they determine that there is permanent damage to the nerves and muscles in my arms. And that is a very expensive test. As you know, all medical tests now are very expensive.

I have no way to pay for those.

Senator SASSER. Prior to being disabled, Ms. Fletcher, what type of work did you do?

Ms. FLETCHER. I was a bookkeeper, office manager and assistant purchasing agent for a paint manufacturing company for 7 years. Bookkeeping was my primary line.

Senator SASSER. And you are unable to follow that line now because of your disability?

Ms. FLETCHER. Yes, sir. I can't be bent over a desk. I can't use my arms to any extent. I can't even lift a bag of groceries. If I have to go to a grocery store, I have to ask them to please bag the groceries very lightly because the strength just isn't there.

My grandchildren, who at the time they cut me off from social security, I had a small grandson. I couldn't even hold that baby, but they said that I could.

Senator SASSER. And this was based on the statement of one social security doctor who examined you?

Ms. FLETCHER. Yes, sir. An orthopedic surgeon, not a rheumatologist or a neurosurgeon, but an orthopedic man.

DECISION REVERSED AFTER 10- TO 12-MINUTE EXAMINATION

Senator SASSER. How long did his examination take place on the date that he indicated that he didn't consider you disabled?

Ms. FLETCHER. I would say I was in his office 10 to 12 minutes.

Senator SASSER. In other words, in a space of 10 to 12 minutes he reversed the decision that the neurologist had made some years before?

Ms. FLETCHER. Yes, sir.

Senator SASSER. And was your impression that he had not reviewed your medical records and was not familiar with your case?

Ms. FLETCHER. When I walked in, the first thing he—the only thing that the man said to me was, "What's wrong with you?" Those were the only words that he spoke to me in the time that I was in his office, other than when he told me to put my—to touch my chest with my chin.

Senator SASSER. Ms. Fletcher, do you have any other comments you would like to make here today?

Ms. FLETCHER. Yes, one other one. I was always a very independent person, proud of the fact that I could take care of myself and my

children with no help, and always thought that I would be able to be independent. And I think that's what most people think.

But unfortunately, sometimes these things catch up with us, and we find out we are no better than anybody else. And I think that some of these people that are doing these things to people like me had better stop and think, "There but for the grace of God go I" because it can happen to them.

Senator SASSER. Thank you, Ms. Fletcher. And we'll try very hard to help.

Ms. FLETCHER. Thank you.

Senator SASSER. Our next witness will be Ms. Jackie Beery-Day who will testify on behalf of Mary Partridge, deceased. Mary Partridge was the social security disability beneficiary. And Ms. Beery-Day, if you would, just kindly proceed with your testimony.

STATEMENT OF JACKIE BEERY-DAY

Ms. BEERY-DAY. Thank you, Senator Sasser. I am very pleased to be here. Obviously, I would much prefer that Mary Partridge be here to talk to you herself.

I would like to briefly outline the case. Ms. Partridge was a 37-year-old woman who was married and walked with the assistance of a cane. She had received concurrent title XVI and title II benefits since 1984. She had an eighth grade education and had worked since that time in factories, doing work that made her stand a great amount of time.

Mary was reviewed by the disability determination section in 1981. At that time she was sent to two consultant physicians who determined that in fact she did remain disabled, and she was continued on the disability rolls.

Mary received a notice in November of 1983 saying that she was no longer disabled and her checks would end in January, 1984. Mary was not sent to a consultative physician. She was found to be able to return to her factory work. She was found to be able to stand and work for a minimum of 6 to 8 hours with no other physical limitations.

Mary had 13 private physicians involved in her case, including a psychiatrist.

Mary received a live-donor renal transplant in 1980.

Senator SASSER. In 1980?

MARY'S BASIC DIAGNOSES

Ms. BEERY-DAY. Yes. Mary's diagnoses—I could go on forever, but I want to just give you a few of the very basic diagnoses that were in her record.

She has had an insulin-dependent, brittle type of diabetes. It was a juvenile onset.

She had instage renal disease due to the diabetes. She was of course a status post-living donor of renal transplant.

She had peripheral vascular disease due to diabetes, which caused her to experience many various and physical problems. Some are hypertension, heart—she experienced a heart attack in 1981 and 1982. She suffered from angina pectoris, which is chest pain upon exertion.

She had a condition called polycythemia which was treated by removal of a half a pint of blood once a month. She had gangrene of her

great toe in 1983, and subsequently had to have the toe removed in May 1983.

She had an arterial bypass surgery performed in May, 1983 because the circulation to her foot on that right side was insufficient. This was to increase the circulation.

She had a condition called aseptic necrosis of the right hip, which is a condition that 5 to 15 percent of the renal transplant patients have after their surgery. It's a very painful, severe disease that is essentially a degenerative bone disease.

She had been told that this would probably crop up on the other side also. This is why she walked with a cane.

It was recommended by the orthopedic surgeon that she have surgery. However, her doctors who dealt with her diabetes felt that the risk was too great because of the risk of infection. So she had to live with this pain.

She also had a diagnosis of chronic anxiety state with depressive features directly related to the very real severe physical conditions with which she had to cope daily.

Mary took very many medications because of these conditions she had. One of the problems that she expressed to me was that many of her medications and medical supplies were not covered by medicaid or medicare. Things like the chem strips and the hypodermic needles, the alcohol swabs; the things she needed to take care of the diabetes, the insulin injections.

She had to have potassium chloride because the heart medications depleted the potassium in her body. That was not covered.

So she spent approximately $190 a month on medications and supplies that were not covered by medicaid, let alone the medication she took that was covered.

In February 1984, we requested that the administrative law judge make a decision solely on the record of Mary's medical condition. The judge did make a decision, and it was a positive decision on the record.

However, it was three days after Mary passed away.

BENEFITS STOPPED WITHOUT EXAMINATION

Senator SASSER. Let me see if I understand this, Ms. Beery-Day. You mean that this woman's benefits were stopped, and she was never examined by a physician?

Ms. BEERY-DAY. No, she was not. Her records were reviewed by a physician employed by the disability determination section.

Senator SASSER. And even though this woman had diabetes, had had a kidney transplant due to renal failure, amputation of the toe resulting from gangrene, two heart episodes, angina pectoris, arterial bypass, and numerous other medical problems; they terminated her disability benefits with no examination?

Ms. BEERY-DAY. Yes, sir. She was told to go back to her former work.

Senator SASSER. So there was no face-to-face meeting with this woman by those who denied her her benefits?

Ms. BEERY-DAY. No, there was not.

Senator SASSER. This was merely a paper diagnosis then by some physician who had never seen her?

Ms. BEERY-DAY. That's right.

Senator SASSER. What did Mary Partridge die from?

Ms. BEERY-DAY. Mary Partridge died from cardiac arrest. Her records indicate that that was—her doctors had said that that was going to be a possibility.

Senator SASSER. Is there any conceivable way that Mary Partridge could have worked at a stand-up occupation for 6 hours a day as the Social Security Administration was saying she could?

DECISION CALLED LUDICROUS

Ms. BERRY-DAY. Senator Sasser, I received a letter from Mary's treating physician who was with the Renal Dialysis Clinic here in Nashville. I sent to him copies of the determination that said she could stand and walk for 6 to 8 hours a day. Her doctor's response was that he felt that it was ludicrous that anybody could assume that she could stand consecutively for 3 hours at a time.

He felt that she may be able to do something that—where she would have to be on her feet for 3 hours only if she had—every 20 minutes had 20 minutes of sit-down or lay-down rest. That would be the only way that that could be done.

Senator SASSER. Did the loss of benefits create stress or strain for Mary Partridge?

Ms. BEERY-DAY. Mary Partridge received continued benefits on appeal. The stress and the strain was phenomenal. This lady already suffered severe anxiety because of being so young and having to deal with the severe physical problems which she faced every day.

She truthfully was very, very fearful, was angry that she had to prove that she was not faking. She went through severe stress. And I just say that personally because she called me several times a week worried about this.

Senator SASSER. Her husband, I believe, is legally blind. Is that correct?

Ms. BEERY-DAY. Yes. He is.

Senator SASSER. What was Mary Partridge's work history?

Ms. BEERY-DAY. Mary Partridge worked from 1962 until 1974, when she became disabled, in three different factory jobs. Her most recent factory job was she washed and packaged thermometers and hypodermic needles for a medical company. And she had to lift between 15 and 30 pounds when the boxes were packed, and stand on her feet while she was packing the boxes, all day.

Senator SASSER. Well, I must say that the story that you bring here today, Ms. Beery-Day, is one of the most outrageous miscarriages of any sense of fairness I think that I have ever heard or that I've heard in a long, long time.

For the record, you are a paralegal for Legal Services of Middle Tennessee, and you represented Ms. Partridge?

Ms. BEERY-DAY. That's right.

Senator SASSER. Did you come to know her as her legal representative?

Ms. BEERY-DAY. Yes, I did.

Senator SASSER. And you received no fee, of course, for representing her. Is that correct?

Ms. BEERY-DAY. Yes, that's true.

Senator SASSER. Do you have any further comment or statement you would like to make today for the record with regard to this particular case, or the way in which it was handled? Or do you have any suggestions or recommendations?

Ms. BEERY-DAY. Well, I think I've gotten over the anger I experienced when I was so excited to call about the positive decision and asking to speak to her and finding that she had deceased. I was extremely angry because I felt like she did not have to go through this. There was no way that she should have been discontinued.

CLAIMANTS FEEL THEY ARE BEING ATTACKED PERSONALLY

Aside from that, I feel like one thing that I see a lot with claimants, they really consider it a personal attack. They feel like they have lost all means of not just financial support, but also that they worked and paid into this. They have no control over their physical condition except to follow their doctors' instructions. And all of a sudden, they're dealing with the stress of this huge Government bureaucracy saying, "You need to get out there and work regardless of how it makes you feel."

And she expressed that to me several times. And she was extremely frustrated, No. 1, that there was nobody to talk to until she got to the stage with the judge. And that is a very scary thing for people, also. They usually get very nervous up to that point.

And that's one of the major reasons that I asked for a decision on the record, was so that she did not have to go through the stress of that hearing.

Senator SASSER. Thank you very much for appearing here today and giving us the benefit of your testimony and the benefit of your experience with Mary Partridge, and the benefit of your knowledge from having worked with her.

Ms. BEERY-DAY. Thank you, Senator Sasser.

Senator SASSER. Our next witness will be Ms. Margaret Hickle. Ms. Hickle, would you come forward, please, and take a seat.

Welcome, Ms. Hickle. Would you be kind enough to state your full name for the record, and also your age, please.

STATEMENT OF MARGARET HICKLE, ACCOMPANIED BY PAT MAYNARD, LEGAL SERVICES OF MIDDLE TENNESSEE

Ms. HICKLE. Margaret Hickle. Fifty-eight years old.

Senator SASSER. And for the record, could we identify the person accompanying you also.

Ms. MAYNARD. Yes, sir. I am Pat Maynard, with Legal Services of Middle Tennessee, representing Ms. Hickle in her appeal of the termination of her benefits.

Senator SASSER. Thank you.

Now, Ms. Hickle, would you describe, please, for the record, the extent of your disability?

Ms. HICKLE. Well, I first had open heart surgery in 1978. Then in 1981 I had a heart attack. Then in 1982, I had bypass on my legs.

There wasn't any blood going down into my leg, and Dr. Rippy said gangrene had already begun to set up in them.

Senator SASSER. When were you adjudged to be disabled?

Ms. HICKLE. 1979. Wasn't that the first——

Ms. MAYNARD. The disability onset date was 1979. The original decision was November 1981, I believe.

Senator SASSER. When were you taken off of disability rolls? When were your benefits denied you then?

Ms. HICKLE. I got a letter—let's see—November, I believe it was.

Senator SASSER. November of this year?

Ms. HICKLE. Mm-hmm.

Senator SASSER. November of last year, it would have to be.

Ms. HICKLE. Last year.

Senator SASSER. And were you examined by a Social Security doctor?

Ms. HICKLE. Yes, I was.

Senator SASSER. When did he examine you—or she examine you?

Ms. HICKLE. He just talked to me, really. I was there about 30 minutes in his office.

NO PHYSICAL EXAMINATION GIVEN

Senator SASSER. Did he carry out a physical examination of you, or just talk to you?

Ms. HICKLE. Just talked to me. Asked questions.

Senator SASSER. Did he give you any electrocardiogram or any sort of——

Ms. HICKLE. No.

Senator SASSER. Did you feel that this doctor had reviewed your medical history and that he was familiar with your background and complaints from a medical standpoint?

Ms. HICKLE. I don't know.

Senator SASSER. Did he indicate any familiarity with your past medical history?

Ms. HICKLE. No.

Senator SASSER. He did not. Now, you have been diagnosed as having severe heart problems. You have had open heart surgery to repair a blockage, and numerous other physical problems. Did he seem to be aware of those difficulties when you were——

Ms. HICKLE. I told him he didn't have much to——

Senator SASSER. But he carried out no examination, no physical examination?

Ms. HICKLE. Huh-huh.

Senator SASSER. Did he listen to your chest with a stethoscope?

Ms. HICKLE. The only thing he did was sit and ask me questions.

Senator SASSER. He just asked you questions. There was no examination carried out at all?

Ms. HICKLE. No.

Senator SASSER. On the basis of that, did he tell you that you were not disabled?

Ms. HICKLE. He didn't tell me.

Senator SASSER. He didn't tell you one way or the other?

Ms. HICKLE. Huh-huh.

Senator SASSER. But subsequent to that examination, you received a notice of termination of your benefits?

Ms. HICKLE. (Nods head.)

Senator SASSER. Now, do you feel that your medical condition has improved any since you first became disabled back in 1981?

Ms. HICKLE. No, sir, I don't. Because I had the bypass on my legs in 1982, after I had been on disability.

Senator SASSER. How many years did you work prior to becoming disabled, Ms. Hickle?

Ms. HICKLE. Practically all my life.

Senator SASSER. Practically all of your life. What sort of work were you doing?

Ms. HICKLE. Well, the reason I'm in Nashville, I came to work for Dolly Parton. And then I went—worked for 9 years, and then went to the path lab in the Tennessee State Penitentiary. And that was when I had my open heart surgery.

Senator SASSER. Is there any pain associated with your condition?

Ms. HICKLE. Yes, there is.

Senator SASSER. What type of pain is it? Is it constant, intermittent?

Ms. HICKLE. Well, it's intermittent, I guess you would say. I have—since I got that notice that my disability would stop, I have had severe headaches and dizzy spells. And my heart specialist said it was from being under the pressure of all this.

Senator SASSER. Does your condition require medication?

Ms. HICKLE. Yes, it does.

Senator SASSER. What type of medication do you take?

Ms. HICKLE. I take Nitromed and Dyazide, which is a blood pressure pill, and fluid, and Ascriptin for a blood thinner. And then my nitroglycerin.

Senator SASSER. You have to take nitroglycerin tablets. Is that for angina pectoris?

Ms. HICKLE. Mm-hmm.

Senator SASSER. How much does this medication cost you on a monthly basis?

Ms. HICKLE. From $55 to $65 a month.

DISABILITY PAYMENTS ARE THE ONLY INCOME

Senator SASSER. If you lose your disability payments on a permanent basis, Ms. Hickle, how will you sustain yourself; how will you pay for medication, food, clothing, and so forth?

Ms. HICKLE. I can't. If I lose that, I have nothing. The only insurance I have is my medicare. And, of course, if I lose the disability, I lose my medicare. I won't have anything.

Senator SASSER. If this disability is denied you, you also lose your medicare coverage?

Ms. HICKLE. Right.

Senator SASSER. And you have no source of outside income at all?

Ms. HICKLE. Not at all.

Senator SASSER. If you were given the opportunity to work, would you prefer to work?

Ms. HICKLE. If I was able, sure.

Senator SASSER. Ms. Hickle, is there any further comment that you or your attorney would wish to make for the record today?

Ms. HICKLE. I just don't know what—I don't understand all their notifications. But I don't know what I'm going to do if it is cut off.

Senator SASSER. Have you been receiving disability payments during your appeal process?

Ms. HICKLE. I have filed for it, but I don't know if they are going to do it or not.

Senator SASSER. How long have you been without payments now?

Ms. HICKLE. Well, according to them, my last payment will be—my last check will be April, the first of April.

Senator SASSER. And you have filed to try to continue to get checks——

Ms. HICKLE. Right.

Senator SASSER [continuing]. While you appeal the decision?

Thank you both very much.

Ms. MAYNARD. Thank you.

Senator SASSER. Our next witness is Mr. Franklin Judd. If you would forward, Mr. Judd, and have a seat, please.

Would you state your full name and age for the record, please?

STATEMENT OF FRANKLIN C. JUDD

Mr. JUDD. Franklin C. Judd. Age 52.

Senator SASSER. Mr. Judd, would you state the extent of your disability.

Mr. JUDD. Well, when I was originally put on disability, I had one ruptured disk in my back, which was affecting the sciatic nerves in my left leg. And that was in November 1981.

Subsequently, in September 1983, I suffered a spontaneous rupture of another disk. And of course, after that I had to have surgery, and I've spent several weeks in bed since then.

Senator SASSER. When were you first determined to be disabled by the Social Security Administration?

Mr. JUDD. That was in November 1980.

Senator SASSER. In 1980. And then when did they notify you they were going to terminate your benefits?

Mr. JUDD. I received the notification to report for an examination in 1981. Well, I received my first social security check in May 1981. I received the notice to report to the social security office in October 1982. And I was examined in November 1982 by a social security doctor.

EXAMINATION LASTED BETWEEN 5 AND 10 MINUTES

Senator SASSER. How long did this examination take?

Mr. JUDD. Oh, between 5 and 10 minutes.

Senator SASSER. I see. Did you feel that this doctor was familiar with your medical history? Did he give you any indication that he read your medical history or that he was familiar with your complaints?

Mr. JUDD. I took my medical reports with me when I went to see him, and also the X-rays and the myelogram reports and so forth.

And so, if he hadn't read them, he could have read them then if wanted to.

Senator SASSER. Did he read them in your presence?

Mr. JUDD. No, sir.

Senator SASSER. He did not?

Mr. JUDD. Huh-huh.

Senator SASSER. Did he carry out an extensive physical examination, or not?

Mr. JUDD. Well, he had me walk across the floor on my toes and back on my heels. He had me sit on the examining table and he checked the reflexes in my legs.

He then told me to lay back on the table, and I told him I couldn't lay back because when I lay back on anything hard, it hurt and also caused severe muscle spasms. And he pushed me back and said, "This will only take a minute."

And he raised my left leg up. And when I made it home, I spent the next 4 days in bed.

Senator SASSER. You are appealing, I presume, your denial of benefits.

Mr. JUDD. I appealed the decision. The administrative law judge found in my favor. That was last May, in May 1983.

In July I received a letter from the appeals council saying that they were reviewing this.

In February of this year, I received a letter from them, saying that they were reviewing it and that they did not go along with the administrative law judge's decision. This is basically what it amounted to.

Senator SASSER. Are they saying they are going to try to terminate your benefits again?

Mr. JUDD. Yes, sir.

Senator SASSER. In other words, you went through the appeal process.

Mr. JUDD. Yes, sir.

BENEFITS WRONGFULLY DENIED

Senator SASSER. And the administrative law judge indicated that the Social Security Administration had wrongfully denied you your benefits and that you were indeed disabled and could not work.

Mr. JUDD. That's correct.

Senator SASSER. And they are indicating to you now that they disagree with their own administrative law judge, their own appellate process; and in spite of what their own examiner says, they are going to terminate your benefits once again?

Mr. JUDD. That is correct. Yes, sir.

Senator SASSER. Does your condition cause pain, Mr. Judd?

Mr. JUDD. I haven't been free of pain since February 1979.

Senator SASSER. Do you take medication for your disability?

Mr. JUDD. Yes, sir.

Senator SASSER. How much medication do you take?

Mr. JUDD. Well, right now I take four to six Tylenol, three a day, plus Bufferin. My bill for prescription drugs last year—this doesn't include what I was given in the hospital—ran $618.

Senator SASSER. How long did you work? How long were you in the work force before you were disabled?

Mr. JUDD. Well, I went to work when I was 13 years old, and I've worked ever since.

Senator SASSER. What type of work have you done over the course of your life?

Mr. JUDD. Well, I started out working in a sawmill, and I got hurt in February 1979. I was doing commercial refrigeration work, and I got hurt. And then I took a desk job because I figured I could handle it. I was no longer able to do refrigeration work.

So I worked as operations manager for Acme Corp., for—well, from February 1979 until November 1980. And I just got to the point that I hurt so bad I couldn't do my job anymore.

Senator SASSER. Now, if you lose your disability benefits, how will you sustain yourself and provide for medication, food, clothing, the necessities of life? Do you have an outside income?

Mr. JUDD. No, sir. No outside income.

Senator SASSER. What will you do?

Mr. JUDD. Well, I guess I'm pretty fortunate in a way. When we moved from Indiana back to Tennessee—the company my wife worked for transferred us.

Senator SASSER. So she's still got a job?

Mr. JUDD. Yes, sir. I depend on her for what I need.

Senator SASSER. Given an opportunity to work, would you prefer to work, or not?

Mr. JUDD. Well, Senator, I've tried to work since I've been disabled numerous times. And I always end up in bed or in the hospital. That's what caused me to have to go to the hospital last year, because I felt when I got this letter from the appeals council that they were going to cut off my social security, there was nothing I could do; and I'd better try to do something to make a living. I still have four minor children at home.

So I got out and started trying to do things, and I ended up paying for it dearly.

Senator SASSER. Mr. Judd, is there any comment or further statement you would like to make for the record here today?

BUREAUCRACY INSENSITIVE TO PROBLEMS

Mr. JUDD. Well, I would like to say that apparently the Social Security Administration, everyone to them is just a name and a number. There's no—they could care less about your personal feelings.

The only man that I met who seemed fair, unbiased, and treated me halfway decent, really, was the administrative law judge. And I think that the administrative law judge was very fair. I think I would have felt that way even if he had found against me.

But I think it needs more personal contact.

Senator SASSER. In other words, you find the bureaucracy to be insensitive and not overly concerned about the problems of those that they are supposed to serve. Is that it?

Mr. JUDD. Yes, sir.

Senator SASSER. Thank you very much for coming here today and sharing your experiences with us.

Mr. JUDD. Thank you.

Senator SASSER. Our next witness today will be Ms. Thelma Helton. Is Ms. Helton in the hearing room?

Just have a seat there, Ms. Helton. Welcome. We are glad to have you here today. If you would, Ms. Helton, pull yourself up as closely to the table as you can there.

Please state for the record your name and age.

STATEMENT OF VELMA HELTON

Ms. HELTON. Velma Helton. My age is 57.

Senator SASSER. Ms. Helton, would you explain for us today the extent of your disability. Just how are you disabled? What is your particular problem?

Ms. HELTON. Coronary insufficiency, high blood pressure, hernia in my esophagus that causes choking and strangulation. Dizziness and out of balance.

Senator SASSER. And when were you first disabled?

Ms. HELTON. May 1977.

Senator SASSER. And when were you notified that your benefits were going to cease? Do you recall?

Ms. HELTON. That I'm going to be reviewed, or my benefits cease?

Senator SASSER. When did they tell you they were going to try to terminate your benefits?

Ms. HELTON. February of this year.

Senator SASSER. February 1984. So you were disabled then from 1977 until February 1984.

Ms. HELTON. I'm sorry. I would like to correct that. I was notified of a review——

Senator SASSER. In February of this year?

Ms. HELTON. In August of last year.

Senator SASSER. I see.

Ms. HELTON. And then I received notification in February that I had been disapproved and that my last social security check would be the third of next month.

MEDICAL CONDITION HAS WORSENED

Senator SASSER. Now, during the period from 1977 until the present time, has your medical condition improved any?

Ms. HELTON. It has worsened. I have additional medical problems. And the ones I had in 1977 have worsened.

Senator SASSER. So your condition has actually deteriorated——

Ms. HELTON. Yes.

Senator SASSER. Since they judged you unable to work in 1977 until now, when they are saying that you're no longer disabled.

Ms. HELTON. Right.

Senator SASSER. Were you examined by a social security doctor?

Ms. HELTON. Yes, I was.

Senator SASSER. When did this examination take place?

Ms. HELTON. October 1984.

Senator SASSER. October 1983?

Ms. HELTON. I mean 1983.

Senator SASSER. We're not to October 1984 yet.

And how long did this examination take?

Ms. HELTON. Thirty minutes.

Senator SASSER. Was it a full examination?

[No answer.]

Senator SASSER. Let me ask you this. Did this doctor appear to be familiar with your medical records at all? Did he appear to be familiar with your complaints at all?

Ms. HELTON. No; I didn't make any complaints because I thought we wasn't allowed to say anything or ask anything.

Senator SASSER. Did you get any indication he had read your medical history before he saw you?

Ms. HELTON. No, sir.

Senator SASSER. Did he seem to know anything about your case?

Ms. HELTON. [Shakes head.]

Senator SASSER. He did not? You're going to have to say yes or no so that lady can write it down there.

Ms. HELTON. No.

Senator SASSER. Now, is there any pain associated with your condition?

Ms. HELTON. I am in extreme pain.

Senator SASSER. How does that manifest itself, in what ways?

Ms. HELTON. It's across my chest and comes out my back and is in both of my arms.

Senator SASSER. Now, do you have to take any medication for your condition?

Ms. HELTON. Yes. I take seven different types of medication.

Senator SASSER. What does that medication cost you on a monthly basis, if you know?

Ms. HELTON. $86 per month.

32 YEARS IN WORK FORCE

Senator SASSER. Ms. Helton, how long were you actively working out in the work force before you were disabled?

Ms. HELTON. I worked 23 years at Washington Manufacturing Co. as a working supervisor. And I worked 9 years at Haywood Co. as a working supervisor.

Senator SASSER. So you worked for 32 years——

Ms. HELTON. That's right.

Senator SASSER [continuing]. Before you were found to be disabled. And during that 32 years—well, almost all of that 32 years, you paid into the social security disability fund.

Ms. HELTON. Yes, I did.

Senator SASSER. If you lose these disability benefits, how will you sustain yourself? Do you have any means or any outside income to provide for the essentials of life?

Ms. HELTON. No, I do not. Genesco was providing me with a very small insurance, which covered part of my medical bill. But their criteria also is based on social security. And it, too, ends with the 3d of April.

Senator SASSER. In other words, you had a disability payment coming from Genesco, but that is dependent on being disabled by social security standards?

Ms. HELTON. Right.

Senator SASSER. If social security says you're not disabled, that sweeps away your Genesco disability payment also?

Ms. HELTON. It ends everything.

Senator SASSER. I think the fact that your benefits are going to expire next month indicates the timeliness of these hearings that we're having here today and the timeliness of bringing this legislation to the floor of both Houses of Congress just as quickly as we can possibly do so.

Ms. Helton, do you have any further comment or statement that you would like to make here today for the record?

Ms. HELTON. Well, I would like to say that I don't think we have been treated as individuals. I think they're just looking at paperwork. And I'm told by different people that they say they just have guidelines, percentages. And if you reach this percentage, OK. And if you do not, that's OK.

And I think more thorough work should be done into our medical history.

Senator SASSER. Ms. Helton, thank you very much for coming here today and giving us the benefit of your views. Thank you.

Ms. HELTON. Thank you.

Senator SASSER. Now, Ms. O'Neil, I understand, is in the hearing room, who has traveled here from Bradyville, Tenn. And Ms. O'Neil, if you would like to come up and make any comments, we'd be delighted to hear from you.

STATEMENT OF THELMA J. O'NEIL

Ms. O'NEIL. I'm a little bit frightened because I hadn't intended to testify today. My name is Thelma J. O'Neil. I live at Route 1, Box 280, Bradyville, Tenn., near Manchester, Tenn. In behalf of my husband, Raymond D. O'Neil, a Korean War vet.

My husband has been disabled since 1969 when he was diagnosed as having cortical atrophy. This is lack of blood supply to the brain. In 1973 he got his disability. We had four children at the time.

Senator SASSER. Now, Ms. O'Neil, is that the social security disability he got in 1973?

Ms. O'NEIL. Right. OK. At that time, Dr. Alexander in Cleveland, Ohio gave him less than a year to live. My husband has seizures. He kept having microaneurysms of the brain. He lost his memory.

He was a lab technician, a superintendent of his company in Cleveland. And at that time that he got so bad, he could not stand, walk, talk. He could not remember where he was going. I retaught him how to walk, sit, eat, feed himself, do everything for himself. With help, he could even go to the bathroom. My sons and I worked with him and got him all back.

He was even able to do some yard work here in Tennessee. I took him to different doctors. Dr. Hester in Nashville. They said "Don't waste your money, Mrs. O'Neil. Your husband has a brain disease that is deteriorating his brain. He will not be able to ever work again."

I took him to doctors in Woodbury, Tenn. They said, "Do not waste your money. Don't take him to any more doctors. There's nothing more that can be done for him. Make him comfortable."

We retaught him how to do so many things in the yard because he can do things at his own speed, his own pace. He cannot be put under stress because he goes into seizures.

DOCTORS DISAGREE ON CONDITION

We took him in to Dr. McPherson in Nashville, Tenn., who says there was nothing wrong with my husband, "Take him off his Dilantin. There is nothing wrong with him."

I took him back to the family doctor, and the family doctor said, "Do not take him off his Dilantin. It controls his seizures."

So we continued on with social security until June 1982 when they stopped their checks. At this time I had two sons in the Marine Corps. My daughter was already grown and trained. And I just had my youngest son at home.

OK. When they took it away from us, we came to Nashville for the doctor to see him. The doctor spent less than 7 minutes with my husband in his office.

Senator SASSER. Was this a social security doctor?

Ms. O'NEIL. Yes. He could not read my husband's medical records from Cleveland, Ohio. I had a pneumoencephalogram with me. I had all of the records of my husband's, but he could not read them. He didn't want to be bothered with them. And out the door we went.

Next thing I know, we have nothing. We couldn't even get our reinstatement.

My sons at the time were in the Marine Corps. They tried to help us by sending us money. I sold my freezer. I sold my stereo. I sold clothes. I sold just about everything I owned. I have nothing left now but the beds we sleep in and the dining rom table and the chair in the living room.

My son had purchased a TV for us. Everything is gone.

I went back. I've done everything humanly possible.

SUICIDE PLANNED

Last October, my husband couldn't stand it anymore. He took a shotgun, and he planned on killing me and himself.

In the meantime, I had no money to buy medication, no money for food or anything. So I took him to the VA. And they were trying to do neurological workups on him there in Murfreesboro. And they said that, "He does have problems, but there's nothing that we can do. Increase his Dilantin."

They increased his Dilantin. When he decided to kill himself, that's when he himself told the doctor, "If you let me go home today, I will not be alive tomorrow."

They hospitalized him there in Murfreesboro, and he stayed there until December 17.

At that time I was trying to get an education so I could get a job to support the two of us. But if I'm away from him, he can't handle it. He can't handle the stress. He tried to learn. He tried—I even got him to go back to school with me at Motlow. He cannot retain what we have already taught him. Simple math problems, a half, a fourth, a third; he can't comprehend this. And at times he can't even tell you what time it is.

I brought him home. I have tried to get—my lawyer couldn't fight anymore, he said, because I didn't have any money to pay him. So I went to Legal Services in Murfreesboro.

And I was just informed now that we are going to have to wait longer because two of the judges are out ill and three judges are trying to handle five judges' cases. This is what the lawyer told me.

And I said, "What am I supposed to live on?"

FOOD STAMPS APPLIED FOR

I went down and applied for food stamps. As long as I was a student—I could not get them while I was going to school. Now I am entitled to food stamps, but believe me, Senator Sasser, I don't want food stamps. I want the opportunity to work or take care of my husband. He is entitled to his disability, VA or social security.

The food stamps, I have—you can't buy soap with them. You can't buy toilet paper with them. You can't buy anything other than food with them. You can't wash dishes.

I don't know about anybody else, but I like to wash my dishes every day. But I'll rinse them and stack them to save on the soap or the cleanser to wash out the bathtub. These things you've got to have to maintain yourself. And you can't get them if you don't have any money.

My son says, "Mom, if you will stay home and take care of Daddy, we will try to send you $100 a month." Each one of the boys are taking money from their family to send to us.

And I think that a man 51 years old deserves the dignity of being able to take care of his own wife. He shouldn't have to ask his sons to send him money to pay a $200 electric bill, to have a phone in the house to call an ambulance for an emergency.

If it hadn't have been for the good people, our neighbors in Cannon County, to help us, we would not have survived these past 2 years. And every day I thank God that we have neighbors and we've raised our sons the way we did. We taught them pride in themselves, dignity. And here is their father who has lost all self-esteem, all self-respect, down on his knees asking for help.

I don't want to go in for food stamps. And he begged me not to, but I went. And the indignity of having to do that after you have worked all your life for everything you have.

I had things in my house I had as wedding presents I had to sell in a yard sale this summer just to get enough money to pay the utility bills. And if you don't pay them, believe me, they will shut them off.

Senator SASSER. Ms. O'Neill, is your husband a veteran of the Korean war?

Ms. O'NEIL. Yes, he is, sir. He was in Korea 18 months. He was up on the front lines. He was at Tempo Air Base when Syngman Rhee let go all those prisoners. And he was caught in that.

Senator SASSER. And you say your husband was examined by a social security doctor who didn't even bother to read his records.

Ms. O'NEIL. No, sir. He did not. He could not read them.

Senator SASSER. Now, are you and your husband presently trying to appeal the termination of benefits?

Ms. O'NEIL. Yes, we are, sir.

Senator SASSER. Are you receiving benefit payments during the course of the——

Ms. O'NEIL. No, sir.

APPEAL PENDING SINCE 1982

Senator SASSER. How long has the appeal been pending?

Ms. O'NEIL. Since 1982. We have been trying to get reinstated. I applied—I didn't know my husband was entitled to VA benefits until this past June when I found out—it was nonconnected to military. And because we have no money, we're destitute, they took him.

And at that time I applied for a VA pension. And I have a letter right here from the Department of Employment Security. And it states here from them, Mr. Bill Young, veterans employment representative. It states here because of my husband's medication, that he would have difficulty even referring him for a job interview.

"Considering the physical condition of Mr. O'Neil and for the benefit of both parties concerned, I cannot even refer him to a job."

Every job service—I have taken him to Tullahoma, McMinnville, Murfreesboro. I have gone up and down the street looking for jobs washing dishes, anything. They won't hire him because he has blackouts and he has seizures.

Senator SASSER. Is your husband qualified for a Veterans Administration disability payment?

Ms. O'NEIL. This is what we are fighting for right now. And Mr. Fletcher over at the VA in Murfreesboro says we may have a chance at it.

But the medication he is on right now, believe me, you wouldn't want him operating any machine. His limitations are he cannot climb, he cannot operate any machinery, he cannot drive, he cannot be put under stress, he cannot be overheated, he can't be in a dusty area. All of these things are there.

Senator SASSER. How long has the appeal been pending with the Social Security Administration?

Ms. O'NEIL. Since 1982.

Senator SASSER. Since when in 1982?

Ms. O'NEIL. We were cut off in June 1982. And we had to go see the judge in Nashville in December.

Senator SASSER. Did the judge here in Nashville render a decision?

FARMERS WILL NOT HIRE HIM

Ms. O'NEIL. He said that he was capable of doing meaningful work. Meaningful work at $2 an hour cleaning out hog pens or something of this nature. Even the farmers now will not allow him on their property to do any kind of work—before, he was even trying to do that—because he blacked out on a tractor.

Senator SASSER. Ms. O'Neil, thank you for coming here today.

Ms. O'NEIL. Thank you for listening. I hope you can help all of the people here in this State on social security. We have a lot of them in Cannon County who need help, too.

Senator SASSER. Yes, I know.

Ms. O'NEIL. Thank you.

Senator SASSER. We've got thousands of them here. Thank you very much.

Our next witness is Mr. Stewart Clifton. Is Mr. Clifton in the hearing room?

Mr. CLIFTON. Yes, sir.

Senator SASSER. If you would, come forward and have a seat, Mr. Clifton.

Mr. Clifton is a staff attorney for the Tennessee Association of Legal Services here in Nashville. He is a graduate of the Vanderbilt Law School of 1976. And as I understand it, his efforts have been channeled primarily in the area of social security cases in conjunction with the Legal Services.

And through familiarity with these cases, he has become very familiar with the social security guidelines.

And you've represented, as I understand it, Mr. Clifton, many disabled persons in the social security appeals process.

Mr. CLIFTON. That's right, Senator.

Senator SASSER. Do you have a preliminary statement you wish to make?

STATEMENT OF STEWART CLIFTON, STAFF ATTORNEY, TENNESSEE ASSOCIATION OF LEGAL SERVICES

Mr. CLIFTON. I do have several things I wanted to say, then answer any questions I could from my experience and from what I have heard from other lawyers that I do work with.

Senator Sasser, I would first like to thank you very much for the opportunity to be here to talk maybe a little bit more, not so much from specific cases, but a little bit more about your legislation and our comments on that.

Those of us who have looked at this know that your bill in Congress on reforming this whole mess that we've hear about is by the far the best one going right now. And we're somewhat puzzled as to why things don't seem to be moving in light of all the things we have heard here today. But it is a good bill.

Now I, and several other staff attorneys and paralegals in Legal Services, plan to submit written comments to you by the end of this month regarding this legislation.[1]

There are eight Legal Services programs here in the State. And each program could have sent several representatives with stories much like what we have heard today.

In the interest of time, and at the suggestion of your staff, we did not do that. I am here sort of representing them to highlight a few issues, and then we will submit the rest in writing.

I wanted to say at the outset that you have heard today from people who live daily with the knowledge that they're disabled and cannot work, and yet who have been told by the Social Security Administration that they should be out working.

I believe you have felt as I have the resentment and the anger that is present.

---

[1] See p. 110.

Now, I'm one of the witnesses who doesn't have to live with that every day, as well as the director of the disability determination section and the ALJ that I think will testify in a minute. We deal with these issues professionally.

And as you know, professionals have this tendency to sit back and decide technical problems and what we can do to resolve technical problems.

Before I get to those technical problems, I just want to say that whatever objective analysis that we bring to bear on this and whatever focus on technical problems that there tends to be in the debate over these issues and maybe in the Hall of Congress, this should not mask for you members of the committee the pure outrage that disabled persons and their advocates feel about what has been going on these last few years.

TERMINATION RATES NO COINCIDENCE

We know that it's not just a coincidence, for example, that termination rates and initial denials have been sky-rocketing. It didn't just happen. The process of cutting off one-half of all the people who have been on the program did not just happen.

It's true that Congress asked the Federal Social Security Administration to review more cases, but you didn't ask for this kind of review which would use incorrect terminations to reduce the cost of the program. Decisionmakers in the Federal Social Security Administration decided to achieve these results. It didn't just happen.

These decisionmakers decided, for instance, to develop, and use very creatively I might add, a new concept called the nonsevere impairment.

Now, Frank Bloch will testify in just a moment in some detail on this. But the nonsevere thing, I cannot resist mentioning just one word about it. In fact, I have a chart here about that, which I wanted to show you.

This is a chart of the number and percentage of nonsevere cases that social security has found over the last 7 years. In 1975, 8.4 percent of their denials were because there was a slight impairment.

Well, it seems that we are in the midst of a medical miracle over these last 7 years because right now 43.5 percent, almost one-half of everyone who was denied benefits was denied because they didn't have a severe impairment. Some of the people you've heard from today, even those who have been on this program for a long time, all of a sudden have not had a severe impairment for some reason.

Senator SASSER. That's what I find mystifying is that they've been found years ago to be disabled, and then we hear testimony that their medical condition has actually deteriorated, and yet the Social Security Administration is coming along now, years later, and saying, "Well, now you're able to work. You are no longer disabled."

WRONG STANDARDS BEING USED

Mr. CLIFTON. And there's some real reasons for that; one of them being that—I don't think the main reason is that we have that much better medical technology. I would not want to say we haven't had an improvement, but from 8 percent to 43 percent is kind of amazing to

me. We're using the wrong standards is why those people are being denied now.

As I say, Mr. Bloch will address what that whole thing means in some detail. But that is only one aspect of the problem, the nonsevere, which is something that Congress never passed. You didn't pass any act about nonseverity.

But I think it does sort of show that it is no accident that Legal Services, private attorneys' offices and other advocates for the elderly and disabled have seen a tremendous increase in the number of calls to their offices over the last few years. I'm sure you have at your offices, too. We now have of our entire cases over 12 percent, social security or SSI. That's more than any other kind of cases except for divorce.

Now, I would say that it is no accident that people are spending their last months, as you have heard today, with unnecessary stress because they have been cut off or have been told they are about to be cut off of disability. And it's no accident, really, that people have committed suicide or have died otherwise waiting for these hearings to reinstate their benefits.

What I wanted to say then was, however moderate the tone of our remarks, those of us who are professionals dealing with this, and however technical and our arguments sound, we would like to urge you to remember and convey to your colleagues that the operation of this disability determination process has created misery and heartache and deprivation in a population whose lives have basically been shattered already by physical and mental impairments.

So we are asking you at the outset to lead Congress to take its rightful place as the controller of this program. It exists because you passed a Law. It is now out of control, and somebody has to control it again.

I can launch into some remarks about the continued benefits issue if you would like me to. Or would you like——

Senator SASSER. Mr. Clifton, what I would like for you to do—time has sort of run out on us here; and we'll be happy to receive your total remarks and incorporate those into the record. I would like to propound one or two questions to you now, if I may.

Mr. CLIFTON. That would be fine.

[The prepared statement of Mr. Clifton follows:]

PREPARED STATEMENT OF STEWART CLIFTON, STAFF ATTORNEY, TENNESSEE ASSOCIATION OF LEGAL SERVICES

INTRODUCTION

Senator Sasser, I would first like to thank you very much for the opportunity to testify regarding your legislation on disability reform. I and several other staff attorneys and paralegals in legal services here in Tennessee will be submitting written comments for your committee's consideration by the end of this month. I hope you realize that each of the eight legal services programs in Tennessee could have sent at least three or four staff representatives to your hearings. The reason we have not is that I received the impression from your staff that other people might want to say a few words. Therefore, we have chosen to highlight only a few issues for you here and submit the rest of our comments in writing for you.

Legal services has always done a lot of Social Security and SSI work. Back in 1980, legal services in Tennessee closed 1,975 such cases, 8.2% of our total. Since then, our total number of cases handled and percentage of total caseload has increased. In 1983, it is projected that we will have closed 2,598 Social Security and SSI cases, 12.4% of our total. The increase is particularly interesting since as you know we now have 25% less money to operate on and generally approximately 25% fewer staff members.

You have heard from persons who live daily with the knowledge

that they are disabled and cannot work and yet have been told by the Social Security Administrtion that they should be out working. You have felt the resentment and anger. I am one of those witnesses as well as Administrative Law Judge Laws and Disability Determination Director Herb Brown who deals with these issues professionally. And as you know, professionals are more inclined to cool recital of "technical" problems and what to do about those technical problems. But before I get into my observations on the technical problems that your bill so well addresses, I would like to say that objective analysis and focus on technical problems should not mask for you the outrage that disabled people and their advocates feel about what has been going on over these last few years.

Advocates know that it is not just a coincidence that termination rates and initial denials have been going up drastically. The process of cutting off one-half the people reviewed after they have already been determined permanently and totally disabled has not just happened. It is true that Congress asked for more reviews, but Congress certainly did not mandate this sort of unfair and incorrect terminations that those reviews have produced. Decision-makers in the Social Security Administration decided to achieve these results. These decision-makers in the Social Security Administration decided, for

instance, to develop and apply a non-severe requirement, even though the Act never mentions severe impairments. Frank Bloch has described how this works. I have a chart here which I believe also describes how this works to some degree. What it all means basically is that 43.5% of potential recipients have their case denied or terminated without any regard to their vocational situation. Senator, I believe you know what the so-called grid is all about. It's also something Congress never passed on but it basically dictates whether an applicant will recieve benefits based on age, education and something called residual functional capacity. The grid has created some problems for advocates and recipients. However, many persons are eligible for disability after being placed on the grid. The discovery of non-severe as a concept has enabled the Social Security Administration to keep many of these people off the grid at all and therefore deny them benefits.

This non-severe business is only one aspect of the problem of course. But I think it serves to show that it is no accident that legal services offices, advocates for the elderly and private attorneys have seen a tremendous increase in the number of calls to their offices and in the number of cases handled. It is no accident that disabled persons in case after case are spending their last few months under unnecessary and inhumane

stress caused by decisions telling them that they should go out and work. It is no accident that people have committed suicide or otherwise died waiting for hearings to reinstate their benefits to Social Security.

However moderate the tone of us appearing here today who are professionals dealing with these problems, however technical our arguments sound, let me urge you to remember and convey to your colleagues that the operation of the disability determination process in these last few years has created untold misery, heartache and deprivation in a population group whose lives have already been largely been shattered by physical and mental impairments.

Congress must take back its rightful role and control this program. It is out of control.

CONTINUED BENEFITS ISSUE

As you have heard, Senator Sasser, from the testimony of those here today and from countless other letters I suppose you have received, the S.S. Administration is once again sending out massive numbers of termination notices to Title II S.S. disability recipients. There was an approximately seven week moratorium on termination notices being sent for Title II cases. It is no coincidence, as the SSA admits, that this moratorium occured at Christmas. Those of us who have become cynical

watching the administration over the years might be tempted to suggest that the federal administrators of this program were hoping that if they could get by the Christmas season without a lot of negative press about cessation-induced suicides, and the like, that perhaps Congress might forget about the major problems still in this disability system. Those of us who might tend to be cynical might also point out that the subsequent stance of the Social Security Administration and the DHHS opposing any significant legislation this year would support our cynicism.

After the testimony we've heard today, what more can I tell you than you already know about the fear and misery that these unexpected terminations can cause in people's lives? One thing I can tell you, I suppose, is that your constituents in Tennessee suffer more without continued benefits than many throughout this country. About half the states have general assistance programs which can pick up the slack when a disabled person is suddenly separated from their only income. It's not much good for the state treasury but it is a slight consolation for the terminated disabled person, even though the amount might not be the same as the disability check. Such consolation is not present in Tennessee since we have chosen not to implement a general assistance program.

Tennessee's state treasury does not escape harm from these

terminations, however. Tennessee does have an AFDC and Medicaid program. It's not a very good program in the sense of being adequate for the poor people of this state. If you're unemployed and living with your spouse, you must leave in order for your children to get benefits. This unfortunate fact is because we have not instituted the AFDC-U program but then that's the problem of the Tennessee legislature. Tennessee's AFDC program is also not very adequate in that the grants are 48th in the country and the standard of need 51st. But there is one little exception to the rule that intact families (that is those with two parents present) cannot receive AFDC. If one of those parents is disabled, which is defined as being incapacity that reduces or eliminates the parents ability to support their child and which is expected to last for a period of at least 30 days, then AFDC and Medicaid can be provided. Needless to say many Tennessee parents cut-off from social security disability have minor children and are under this definition able to qualify. Around 30% of the AFDC and AFDC-related medicaid program's expenses are state dollars.

Therefore, not only has the great increase in terminations, and for that matter the increasingly harsh rules placed on initial applicants, had a severe impact on the recipients and applicants, SSA's policies have also helped deplete Tennessee's

treasury.

NON-ACQUIESCENCE ISSUE

Let me turn now from the need for continued benefits for Title II recipients to other issues. For simply providing continued benefits through the ALJ hearing level won't solve the problem. It will help but it won't solve it at all. One major reason is that ALJs make mistakes. We know this because of the number of times their decisions are reversed by federal courts. But not all of those mistakes are their own fault. As Judge Laws has told you, their hands are tied by policies from the Social Security Administration which they may not like and which Congress may never have intended but which nevertheless bind them.

Many law judges have felt intense pressure to lower their approval rates and to abide by Social Security policies that have no grounding in the law. They have stated that their judicial independence had been invaded by the Social Security Administration. That is, of course, not the case for a great many administrative law judges nor is it the official position of the Association of Administration Law Judges. As the committee probably knows, the ALJ Association was forced to sue the Department of Health and Human Services for imposing quotas and penalizing ALJs who did not have good rating based on those

quotas. I offer this bit of information to underscore the need for congressional intervention in this system which Congress created but which lately has gone crazy. I offer this bit of information also in support of my view that not everything is going to be fine just long as you can get someone to continue benefits to the ALJ level. It won't be fine because ALJs are, in fact, strongly encouraged to make their decisions on the same basis as disability examiners make their decisions. ALJs must not acquiesce in court decisions even though they are lawyers and even though it usually grates on them to do so. ALJs must pay careful attention to how many cases they are allowing or otherwise their jobs or at least professional advancement may be threatened.

One of these policies is a somewhat impressive sounding thing called "non-acquiescence." Non-acquiescence, however, is not the technical problem that it may sound like. What non-acquiescence means is that "we're not going to go along with it." In the context of your legislation, of course, it means that the Social Security Administration doesn't care what anybody else thinks or says short of the Supreme Court. They are going to apply their policies no matter how many times they have been told those policies are wrong and illegal. SSA does not care what Judge Morton, Judge Nixon or Judge Wiseman decide should be the policy

34-198 O - 84 - 8

or decide is in line with the Social Security Act which Congress has passed. They don't even care what Judge Merritt, Judge Wellford, Judge Jones, Judge Phillips or any other judges of the Sixth Circuit Court think. No matter how many times the Court tells them that severe pain can be a basis of disability, as long the medical evidence is consistent with a painful disorder, and that the allegations of pain are credible, the Social Security Administration insists in every case, and they insist as far down the line as they can go, that objective mecical evidence must prove that the pain exists and must prove that it is of a disabling nature. There are many other examples where SSA always non-acquieses.

And not only does SSA not care what courts say. They also don't appeal to the Supreme Court. That means that a claimant who wanted to establish once and for all what the proper policy should be on the evaluation of pain could simply not do it, because winners in Circuit Court can't take their case to the Supreme Court.

Your legislation addresses this problem and if passed will probably solve the problem. There are some obvious reasons why the problem must be solved. Its more than just that non-acquiescence creates problems for lawyers. What it creates for lawyers are legal fees. A lawyer well knows he's got a winning

case if he has an issue like pain or treating physicians not being accorded much weight because the Sixth Circuit has spoken on it time and time again. And yet in a way it is a problem for lawyers, a problem for advocates and results, in the case of legal services, in a great deal more time being spent on these cases than should be. For every client who comes in and has to go all the way to District Court or the Sixth Circuit on what should have been a fairly simple disability claim there are several cases that cannot be handled. Cases like battered spouses whose divorces cannot be handled. Cases like tenants who are wrongfully evicted because no lawyer could handle their case.

But, obviously not everyone appeals. Many people somehow still believe that federal bureaucracies know what they are doing. Many people have grown up believing that you can't fight city hall and you sure can't fight the federal government. And a huge percentage of people being terminated, almost 25%, have mental impairments which call in to question their ability to pursue their cases past an initial denial or a termination notice.

The legislation addresses this costly, harmful policy of non-acquiescence in a necessary way.

MEDICAL IMPROVEMENT ISSUE

One of the most important parts of your bill has to do with

medical improvement. Obviously, I would support that provision of the bill and underscore its importance. People are not being terminated from the rolls because their condition has improved for the most part. They are being terminated because their situation is being looked at entirely new and with new standards. I have mentioned before the non-severe problem. Because of the way the Social Security Administration forces decision-makers to look at non-severe impairments, many people are now terminated who have the exact impairments they always had.

Your bill has a number of exceptions to this rule and they will certainly take care of any legitimate criticism that people who should not have been on the program to start with would be able to benefit from the medical improvement standard.

I don't know if you're aware of exactly how RFCs work in this whole strange process. An RFC is a residual functional capacity. It means that someone can do light work, sedentary work, heavy work, medium work, etc. RFCs are now assigned by the state agency medical doctor. This state agency medical doctor has not seen the claimant. The RFCs are not even asked of the treating physician or even the consulting physician. They used to be asked for but SSA deliberately decided that too many people were winning their cases when a treating physician or consulting doctor was asked about residual function capacity so they began

asking their own employees who had not even seen the claimant.

With the medical improvement standard, I believe the harshest effects of the RFC being decided by someone who has never seen the person will be alleviated.

CONCLUSION

I conclude by repeating that the social security disability program is out of control. Congress should provide the necessary control by reasserting its rightful role. The legislation under consideration is needed and would to a large degree restore equity and fairness to the program.

TREATING PHYSICIAN SHOULD HAVE THE GREATEST WEIGHT

Senator SASSER. In your estimation, how much weight should be afforded the treating physician in the disability review process? And how does this differ from what is happening now in current practice?

Mr. CLIFTON. It is my impression that someone who is treating a patient, who is prescribing medicine, who is seeing that patient more than anyone else on a medical basis, should have the greater weight to be given to their assessment. That is not happening.

It is not happening because the disability examiners don't give it the greatest weight. It's not their fault, because they're told by the Federal department not to do that. It's not happening because of something called nonacquiescence.

And if I could, I would like to address that. I know it sounds like a very technical term. I said I wasn't going to get bogged down in technicalities.

But in this circuit, Judge Merritt, Judge Welford, all the judges on the sixth circuit, have said time and again for years that you must give a treating physician's opinion more weight until for some reason you find it not credible.

Well, that doesn't happen because of this nonacquiescence business. It basically means, "We don't care what you say. We're going to do what we have been doing." And no matter how many times people appeal to the sixth circuit court and win, the Social Security Administration, and by their direction, the ALJ's just basically pay no attention to it unless you go to court.

Senator SASSER. You have to make new law in each case.

Mr. CLIFTON. Exactly.

Senator SASSER. In the sense that they don't adhere to the well-established principals.

Mr. CLIFTON. No, they don't at all. I mean, that is what is puzzling to people like those we have heard testify. They know they are disabled. Maybe their lawyer has even told them they have a good case. And yet we have to file the same case time and again.

And you know from your years as an attorney, when you go to the sixth circuit, you have put in a lot of time and effort, and have wasted a lot of time and effort if you go in there when you shouldn't have to.

COURT DECISIONS SHOULD BE IMPLEMENTED

So I think that's one of the real big areas that your bill addresses. It would require the Social Security Administration to implement court decisions. There's nothing revolutionary about it, they just haven't ever done it.

Senator SASSER. Why should they be different from anybody else? Why shouldn't they have to implement the court decisions just as others do?

Mr. CLIFTON. I don't know. If they think you're wrong, you would think they could appeal it on up to the Supreme Court and get a ruling. As you know, if a claimant wins at the sixth circuit, even if he or she started out trying to establish a rule for everyone; you can't take it up to the Supreme Court if you won. I mean, it all rests with the Social Security Administration, what they want to do.

And they just sit tight and say, "That's only going to affect one person. Maybe other people won't appeal and maybe we'll save money that way."

Senator SASSER. Thank you very much. I appreciate you appearing this afternoon.

Mr. CLIFTON. Thank you.

Senator SASSER. Our next witness is Judge Robert Laws. Judge Laws is the administrative law judge in charge of the Nashville office of hearings and appeals, and he has been an administrative law judge since 1974.

And I might say that Judge Laws is a graduate of Vanderbilt University and Vanderbilt Law School and had the dubious distinction of going to law school with me some years ago. But he looks a little younger than I do now. He has been employed previously by the State of Tennessee Department of Agriculture.

Judge, we are delighted to see you today, and we would like to hear from you any statements you wish to make. And if you don't have a statement, we have some questions we will ask you.

STATEMENT OF JUDGE ROBERT LAWS, ADMINISTRATIVE LAW JUDGE, NASHVILLE OFFICE OF HEARINGS AND APPEALS

Judge LAWS. Thank you, Senator, My name is Robert Laws, and I am the counterpart of Judges Graves. You have just heard from him this morning down in Memphis.

In addition to handling the duties of an administrative law judge, of course, I'm also in charge of the administrative duties of the office in reviewing the proposed legislation which you sent to me under the cover letter of March 2.

I felt you would want some statistical information concerning cessation cases as they have occurred in the Nashville office. I have compiled them over a 14-month period beginning in January 1983 and ending with the month of February 1984.

58 PERCENT BEING PUT BACK ON THE ROLLS

During that period of time, our office here in Nashville, the office of hearings and appeals, received 1,456 cases. We've had an opportunity to hear or dispose of 1,083 of these cases. In that number, 452 were affirmed, or that is to say the determination that they were no longer disabled was affirmed; and 631 were reversed or placed back on the rolls.

On a percentage basis, you're talking about 58 percent, which basically means 6 out of 10 are being put back on the rolls as far as the Nashville office of hearings and appeals is concerned.

I am sure that you're aware of the role that we play in the scheme of the bureaucracy.

They have an initial and a reconsidered determination done by the State agency before they come to us. And then we hear them upon a request for hearing.

They usually appear with representation, which is also a statistic that I would like to share with you. That came in an operations report completed by our organization. That is showing that the representation participation is increasing more and more.

From a personal standpoint, I can remember that in 1974 and 1975 when I first came on board, that if I set a 20-case docket, that maybe 4 or 5 claimants would be represented. And that's reversed now.

Senator SASSER. What do you think accounts for the fact that so many more are represented?

Judge LAWS. I think your Legal Services and legal aids are getting more involved in it, particularly here in Nashville, because we have the university, the law school and Professor Bloch and his organization. And Legal Services is not only doing it individually, but they also have what they call a contract program where they are involving the local bar.

And then I also feel like that the local bar is becoming more aware of the fact that there can be some fee-generating situations created in the representation.

And that's all I have in the way of a preliminary statement. If you have some questions——

Senator SASSER. Judge, there are a couple of questions I would like to ask you. You have been an administrative law judge here in Nashville now for 10 years. And I'm sure that over the past decade you've developed a substantial body of knowledge as to how the system operates on a daily basis.

SOLVE THE EXISTING CONFLICT

Now, would you tell this committee here, in your estimation, what would be the biggest improvement that we could make in the social security disability review process?

Judge LAWS. Senator, from the standpoint of an administrative law judge, I feel like the most critical area that needs your attention right now, particularly from a legislative standpoint, would be the conflict that seems to be in existence between the Social Security Administration and the Federal court system.

The Federal courts, of course, make rulings on social security cases and set what we like to think would be precedent. But once those decisions are made, we are not necessarily bound by them.

Under our oath and under our job that we have, we are bound by the social security regulations. And those regulations sometimes fly right in the face of court interpretation of particular aspects of the law.

Now, in holding a social security hearing, I would like to feel like, as a past practicing attorney and one who has studied the law, to feel that I could follow these court interpretations, follow this case history. But I am mandated to do otherwise. And of course, I do.

NONACQUIESCENCE OF ATTITUDE ASTOUNDING

Senator SASSER. I was astounded when we got in this to find this nonacquiescence attitude on the part of the Social Security Administration. In other words, I had been trained to always believe that once a court made a decision, that this was precedent for what came afterward.

But in this situation of nonacquiescence, you have to make a new law with every individual case, apparently. And that was just astounding to me. I couldn't believe that was happening. And it appears to me that this would work a great injustice on the individual claimants because they would have to go to the expense of reestablishing a new point of law or making new law with each individual case.

And it's difficult for me to see how you ALJ's can operate very effectively without having access, at least, to guidance from the court decisions.

Judge, you said that here in the Nashville office, in the review process under your jurisdiction, that something like 6 out of every 10 disability cases that come before you or the other ALJ's here are reversed from the examiners' ruling, and claimants are reinstated and put back on the rolls. Now, to me this is a rather alarming statistic, and indicates that something is askew between the criteria used to terminate the beneficiaries on the one hand by the examiners at the State level and the different view taken by the administrative law judge at their level.

Now, I realize that is sort of a ticklish question to put to you here today, but we're just trying to get at the facts because we're trying to develop some legislation to deal with this very serious—and on a national basis, a problem that has really reached crisis proportions.

REASONS FOR HIGH REVERSAL RATE

What explains for this high reversal rate? Why the difference between the findings on the one hand of the examiner at the lower level and the fact that the administrative law judges, all of whom are trained attorneys or have been trained in the field of review, differ with those lower rulings 60 percent of the time? What accounts for that?

Judge LAWS. This has been a bone of contention for some time. That is that the lower adjudicatory process was using a different set of standards than we were using at the ALJ level.

And the administration, in an attempt to put those on the same basis, have instituted again through the process of installing social security regulations a uniform basis for adjudicating these claims.

But it really apparently has not taken effect, at least not at these lower levels.

I would have to say though that the real basis for the additional high level of reversal is based on additional medical evidence that is gathered at the administrative hearing level.

For instance, I have the authority to order consultative examinations. And I can specify that the claimant be examined by a specialist in the field where the impairment lies. And there is also the disease process. Sometimes it just doesn't get to a disabling state until it gets to us.

And another area would be the time element. As you know, the act requires 12 months of continuous disability. And maybe their allegation of disability has only been 6 or 7 months.

So those factors, I think, have a direct bearing on the reversal rate.

Senator SASSER. Well, I'm confident that they do have a direct bearing on the reversal rate. And I've got a theory in addition to that that I won't ask you to comment on. But we received an anonymous letter from the social security office in Memphis, Tenn., an examiner there, who wrote to my office anonymously in 1982 stating that their office had been given a quota for removing a certain number of individuals from the disability rolls of that office.

Now, we subsequently sent the General Accounting Office to Memphis. The General Accounting Office made an investigation there and was unable to objectively substantiate those allegations. The anonymous tipster didn't come forward.

But we continue to get ripples of information that examiners are looked on more favorably if they hold against the beneficiaries than if they hold in their favor.

RATING THE PROFICIENCY OF EXAMINERS

For example, we were told by your colleague, the administrative law judge in Memphis, this morning that in rating the proficiency of an examiner of the Social Security Administration what they were doing is in determining the proficiency of an examiner, they were reviewing 100 percent of the cases in which they found that benefits applied to them, but only 10 percent of those cases where they denied benefits.

In other words, the safest way to cover yourself would be to deny benefits because if you denied benefits in a case, there was only a 1 out of 10 chance of that being reviewed as opposed to one where you granted benefits.

It works to reward the examiner who denied benefits as opposed to the one who awards benefits. It's a little administrative bureaucratic maneuver there that makes it easier on those who deny benefits than those who award them.

Now, we were told this this morning by your colleague down in Memphis.

Judge LAWS. When you say disability examiners, Senator, are you talking about an ALJ now?

Senator SASSER. No, not the ALJ.

Judge LAWS. You're talking about at the State agency level?

Senator SASSER. I'm talking about at the State agency level.

Judge LAWS. Well now, I'm unaware of any such directive or wheeling and dealing at that level. But I notice you have a Herbert Brown coming on here who happens to be the director of the State agency here. And I would like to defer to him on that question.

Senator SASSER. We'll get to him.

Judge Laws, it's good of you to come today.

Judge LAWS. Thank you, Senator.

In closing I would like to say that even though they do refer to our alma mater sometimes as the Harvard of the south, I like to think of Harvard as being the Vanderbilt of the north.

Senator SASSER. Thank you, Judge.

Our next witness is Mr. Herbert L. Brown, who is the director of the disability determination section in Nashville, Tenn. Would you come forward, Mr. Brown.

That comes under the jurisdiction of the Tennessee Department of Human Services. Mr. Brown received his masters in public administration from the University of Tennessee and has served as director of the disability determination section since 1955.

He is a past president of the National Association of Disability Examiners. And because of his expertise in this field, we have asked him to testify here today. He has testified before several congressional commitees on disability issues over the years.

The disability determination section is the State agency which makes decisions on disability and on SSI cases as well as the continuing disability investigations; all done in accordance with guidelines issued by the Social Security Administration and the Department of Health and Human Services.

Welcome, Mr. Brown. We would be delighted to hear any statement that you might wish to make.

STATEMENT OF HERBERT L. BROWN, DIRECTOR, DISABILITY DETERMINATION SECTION, TENNESSEE DEPARTMENT OF HUMAN SERVICES

Mr. BROWN. Thank you, Senator Sasser. First let me thank Judge Laws for the referral of that very interesting question. I hope you forget it before we get around to it.

Senator SASSER. It is a tough question. I'm not sure I can remember it.

Mr. BROWN. The social security disability program has never been a popular program because qualifying has always been difficult. Even during the good times, I can't remember the favorable decisions outnumbering the unfavorable ones by much.

If earnings test and income and resources didn't disqualify you, it seemed the disability criteria would. As a result, we had more dissatisfied claimants than satisfied ones.

There has always been the feeling, though, that if you ever got qualified, your chances of being cut off were pretty slim. There has also been the belief that after you got turned down the first couple of times, your chances got better. So the incentive was natural to pursue the appeal.

CONFIDENCE IN DISABILITY PROGRAM ERODING

Confidence in the disability program has been eroding for years. Exactly where it started or what caused it would be hard to say. It is clear that more recently the state agencies involved in the process have taken the brunt of the criticism.

For years, those little known agencies containing highly skilled disability examiners, secretaries, supervisors and physicians have performed a commendable job of adjudicating disability claims. It has always been a mystery to Congress how such a loose federation of agencies over which social security exercised so little control could for the most part perform so well with allowance denial rates, consultive examination rates and rates of productivity varying from one extreme to the other.

But I think the record is clear that the state agencies have been closely following the lead of social security, if not Congress, in applying policies and procedures social security has promulgated.

Over the years, as the program tightened up on instructions from Baltimore, by way of new regulations, new procedures, revised listings, improved medical technology, tight fiscal policy, not to mention State restraints; the DDS's complied and not infrequently responded to congressional hearings as to what they were up to.

My recollection is that the States had a commendable track record, held so much additional responsibility, or the disability program would not have been transferred to them until March 1981. It should have been obvious then to all disability-watchers that the States, when they began to receive beneficiary cases for continuing disability review, would have no choice but to use the same criteria on these cases that were being used to adjudicate claimants filing for the first time, which was resulting in a 70-percent denial rate of initial claims.

Add to that the fact that literally thousands of these accelerated cases were dumped on the States 9 months early with only a telephone call a week before they started arriving. No advance notice to us, the beneficiaries, the public, no one.

About 90 days later, we were required to begin preparing personalized denial notices. All of these highest priority. The DDS's were suddenly thrust into the limelight. They were unprepared and understaffed. And medical resources necessary to document disability decisions had to be acquired quickly and sometimes too quickly.

MISTAKES MADE IN SOME CASES

The case loads soon reached alltime highs. Accuracy decreased while processing time increased, both beyond acceptable limits. We made some mistakes, some terrible ones. We perhaps have seen some here this afternoon.

This scene could be duplicated in every capitol city across this country this afternoon. This is not isolated to Memphis or to Nashville.

Some issues getting media coverage only appear to be mistakes, but they weren't. Few people knew or understood that the criteria used to reevaluate these beneficiaries were far more stringent than the criteria used to make the original allowance of benefits.

As a result, the expected termination rate of 20 percent suddenly soared to 40 or 50 percent. Beneficiaries who never expected to have their eligibility questioned were rather suddenly without income.

To make the credibility of the State agencies even worse, the administrative law judges, as has been testified here this afternoon, were restoring benefits to upward of 65 percent of the beneficiaries who appealed, albeit 6 to 9 months after the fact, maybe longer.

The public still has difficulty believing the fact that the administrative law judges have broader discretion than the State agencies. They find it unbelievable that they are following different adjudicative criteria.

Now within the last few months we have seen the courts and some Governors attempting to rectify a problem that is national in scope and clearly the responsibility of Congress.

The face-to-face evidentiary hearing process for terminated beneficiaries will probably get underway here in Tennessee next month. Our request for authority and petitions has been approved by State officials, however SSA has issued a temporary delay until regulations are published within the next 2 or 3 weeks.

I doubt that I have presented any new information thus far in my testimony. I also doubt that my testimony has changed the minds of those who see the State agency as the guilty party in the process.

I'm not defending the disability program, only trying to explain how it works.

With due respect to Congress, some of the disability program problems resulted from legislative reforms, others from the lack of reforms. The tendency seems to have been to patch up the program rather than perform a comprehensive major overhaul.

CREDIBILITY MUST BE RESTORED

But the problem is not altogether Congress either. In fact, all of us, Congress, SSA, and the States must accept our part of the problem and work together toward restoring credibility of the program and humane treatment of claimants and beneficiaries.

I hope that passage of the legislative reform currently under consideration is more than another patch job. The adjudicative levels have the greatest discretion. Administrative law judges and the courts are the most expensive and the most time-consuming, but this is where justice is conceived to be finally applied.

Let's assume that together the States and the ALJ's had 100 percent adjudicative discretion. Given that premise, the States have about 20 percent and the ALJ's 80 percent. Others would argue 10 and 90, or even perhaps zero and 100.

Surely all of us would agree that the correct decision needs to be made at the earliest possible point. But the earliest decision made by the States are bound by so many SSA guides, policies, and instructions that there is little room for justice. It either fits or it doesn't. Most, in fact 70 percent, don't fit or don't qualify.

The next decisionmaker, a State reconsideration examiner, having exactly the same limited discretion and hopefully a couple of years of experience, but usually about the same evidence on which to base a decision, can hardly do more than affirm the prior denial.

Additional evidence may be secured, but seldom can a favorable decision be made. The reversal rate on reconsiderations in the Atlanta region last fiscal year was 10.2 percent. I wonder if it is wise to spend money, time and resources on a process that pays so few dividends.

But this is required in most cases before justice can finally be accomplished at the ALJ hearing where 65 percent of appealed cases in Tennessee were reversed last year.

The perception seems to be that justice isn't done unless a favorable decision is made. It is doubtful that a day goes by but that most disability examiners are faced with making unfavorable decisions that they don't agree with and that are totally unrealistic. But their adjudicative discretion is pretty much limited.

There seems to be little doubt that the current criteria are either too stringent or being applied too rigorously or both. I really don't know.

I do know that years ago the disability examiners of the state agency positions were decisionmakers. They had the discretion to decide cases. There was even a philosophy that if the decision is close, rule in favor of the claimant. Now I'm afraid the opposite is true to the ALJ's.

ACT IMMEDIATELY ON CURRENT DISABILITY LEGISLATION

I propose that Congress take immediate action on the current disability legislation. And if they want medical improvement applied to continuing disability reviews, we can do that. This should reduce the termination rate by at least half, and this would provide a more humane and understandable application of the rules at an earlier point in the decision process.

I'm not sure, however, how that approach would affect those terminated within the last 3 years, 15,000 of them here in Tennessee, or how it would affect individuals filing claims for the first time.

My suggestion would be to reduce the level of severity required to qualify for benefits, permit greater discretion of the state agency adjudication teams, revamp the appeals process to eliminate the current reconcideration process, and perhaps establish a disability court or model the appeals process somewhat after the Veterans' Administration.

You are well aware that the disability program has never been more fragmented what with both the courts and a number of Governors requiring various DDS's to take positions contrary to national policy. There is a patchwork across the country of unequal treatment of beneficiaries that can only be corrected by Congress, and that action is needed immediately.

I appreciate being asked to attend the hearing and will do my best to respond to any questions you may have.

Senator SASSER. Thank you very much, Mr. Brown. I think you have done a good job of outlining some of the problems here and, I think, outlining some of the solutions.

I think clearly one of the large problems, at least in my judgment, is with the Social Security Administration guidelines that have to be followed by your examiners here at a State level.

And also clearly one of the problems has been the acceleration, the 9-month acceleration on the part of the Administration leading up to the examination process or re-examination process which was mandated by Congress to begin on a certain date. But as you've detailed, the Administration began it 9 months earlier giving little or no notice to the State examining agencies as to what was to come until it was actually upon them.

Mr. Brown, if I can call your attention to this chart here, as you can clearly see from the chart, the Department of Health and Human Services in Washington has effectively issued four different sets of directions to the Governors of the different States.

The States in the green area—and those are the Far West States with the exception of Maryland and West Virginia—have been told to process their disability cases under court-imposed standards.

Now, the Ninth Circuit which covers the area has recently ruled that a medical improvement standard was a necessary criteria in determining disability cessation cases.

Conversely, the States here in the red areas have been instructed to process cases despite the State-imposed moratorium.

Also, the States covered in the blue area areas have been instructed to continue their moratorium due to pending legislation.

And lastly, we come to the states in the white areas—and Tennessee is one of these—that has been instructed to process cases using Social Security Administration internal guidelines, or stated succinctly, business as usual.

CONFUSION AND CHAOS IN ADMINISTRATION OF PROGRAM

And my question to you then, Mr. Brown, is that based on this information—you've got four different sets of criteria—does it not appear that disability beneficiaries in certain regions of the country are being afforded more protection in some States than in others, such as Tennessee? And if so, does this appear to be uniformly fair and equitable to all social security disability claimants?

Mr. BROWN. You could draw no other conclusion. It's not uniform or equitable.

Senator SASSER. So what we have here, what I am seeking to point out, is the present confusion and chaos in the way the program is being administered with regard to the review process, and also indicating that we have in essence at least four different review processes because of four different criteria being imposed on the review process in the different sections of the country. Clearly this leads to a more favorable treatment of beneficiaries in one area of the country as opposed to another. And this is something that I think our legislation will deal with and needs to deal with just as expeditiously as possible.

Mr. BROWN. And if not done soon, there will be more states added to that, either by circuit court or Governors themselves.

Senator SASSER. In other words, the situation will become even more chaotic.

MORATORIUM DECLARED ON FURTHER DISABILITY TERMINATIONS

Now, as I recall my facts, we have had at least nine Governors across the country, including the Governor of Alabama, the Governors of both of the Carolinas, the Governor of Virginia—and these are just the Southern States—who have declared a moratorium on any other disability terminations in their States until Congress addresses this issue and reforms the legislation. Is that a correct statement?

Mr. BROWN. That's true, yes, sir.

Senator SASSER. We have, all told, about 33 States in which the Governors have uniformly declared a moratorium on further disability termination; or the courts have done likewise, if I'm not mistaken.

Mr. BROWN. Yes.

Senator SASSER. Why didn't we do that in Tennessee, Mr. Brown? Why didn't our Governor do that?

Mr. BROWN. You would need to pose that question to the Governor.

Senator SASSER. I wrote him a letter and asked him.

Mr. BROWN. Do you recall his response?

Senator SASSER. Yes, sir. He said that it would be illegal, but if it is illegal for him, why isn't it illegal for Governor Wallace of Alabama and the Governors of the Carolinas and Virginia?

In other words, the only penalty for declaring the moratorium under the law would be that the Federal Government would have to come in and take over the disability review process and federalize it. I see no idication that that is in the immediate offing.

Mr. BROWN. Not being an attorney—and I would defer to those of you that are—I suspect——

Senator SASSER. You might make a mistake in doing that.

Mr. BROWN. I suspect the Governors did take an illegal action. Governor Alexander, in writing you, told you as you would agree that this is a Federal problem and the resolution needs to be taking place in Washington, and soon, very soon.

14,880 CASES TERMINATED SINCE MARCH 1981

Senator SASSER. Could you provide this committee with the following statistics. And you may have to search your records to do this. The number of cases that have been terminated; the number of beneficiaries that have been terminated in Tennessee since March 1981. Do you have that in your file?

Mr. BROWN. Yes, sir. It lacks about 120 of being 15,000.

Senator SASSER. About 15,000 people have been terminated from the social security disability rolls in Tennessee since March 1981?

Mr. BROWN. Exactly 14,880.

Senator SASSER. Of that 14,880 who were terminated, how many had been reinstated?

Mr. BROWN. I have no idea. Not 65 percent as you might infer because all those people probably didn't appeal. I have no idea what percent of those would have appealed.

Senator SASSER. Do you recall how many people were on disability in March 1981? Do your records indicate that?

Mr. BROWN. Somewhere, yes, sir.

These are somewhat rough figures and relate only to the number that are on the disability roll. And you would need to take into consideration the number that return to work, the number that reach age 65 and then went on the old-age retirement rolls. But in December 1980—which is not the figure you asked for—there were 73,447 beneficiaries.

Senator SASSER. We know that since March 1981 some 14,880 have been terminated.

Mr. BROWN. As of March 1981?

Senator SASSER. Yes, sir.

Mr. BROWN. No, sir. As of about February 1984. Beginning in March 1981.

Senator SASSER. Beginning in March.

Mr. BROWN. We began the terminations.

Senator SASSER. Then of that 14,880, we don't know how many have been reinstated; do we?

Mr. BROWN. No, sir.

But as of June 1983, there were 67,610 still on the beneficiary roll. But I would be careful about drawing any conclusion.

Senator SASSER. I wouldn't dare draw a conclusion from those two figures there. But clearly we have had an extraordinary amount of people who have been terminated since March 1981 here in Tennessee. The figure, I think, is 470,000 all across the country.

Mr. BROWN. You will recall that there has been a moratorium on mental impairments now for a number of months. We have not been reviewing them, but will as soon as new criteria have been developed.

Senator SASSER. Mr. Brown, your testimony here has been very, very helpful.

Are there any further comments you would like to make, Mr. Brown, other than to wholeheartedly endorse my social security reform legislation?

Mr. BROWN. Wholeheartedly endorse it. I think you can't help but detect through my testimony some frustration on our part. It bothers me as it bothers you to have heard these individuals testify as to what has happened. There is another 14,000 or 15,000. This is fairly typical. This is the way it's working.

I know this was your intent to bring it before this body. I appreciate being asked to be here.

Senator SASSER. Thank you very much, Mr. Brown.

Our next witness is Mr. Franklin Bloch, associate professor of law and director of clinical education at Vanderbilt University.

Mr. Bloch graduated from Brandeis University in 1966. He is a graduate of the Columbia School of Law in 1969, and earned a Ph. D. degree from Brandeis University in 1978.

Dr. Bloch has numerous professional publications to his credit and has completed a book entitled "Federal Disability Law in Practice" to be published in the fall of 1984, for those of you interested in some light reading after the fall of 1984.

He is a member of the board of directors of the Legal Services of Middle Tennessee, a member of the American Bar Association, the National Legal Aid and Defenders Association, and the Nashville Bar Association.

Welcome, Dr. Bloch. We look forward to hearing your testimony.

STATEMENT OF DR. FRANKLIN BLOCH, ASSOCIATE PROFESSOR OF LAW AND DIRECTOR OF CLINICAL EDUCATION, VANDERBILT UNIVERSITY

Dr. BLOCH. Thank you, Senator.

Senator Sasser, I don't have to tell you about the importance of the Social Security disability program, the importance of this program to people who are unable to earn their living.

DISABILITY STANDARD IS STRICT AND BROAD

The disability standard under the Social Security Act that applies to the cases that we've been talking about this afternoon is at the same time strict and broad.

As you know, it is strict in that one must be unable to perform any substantial gainful activity. But on the other hand, it is broad in the sense that it takes into account the effect of the person's age, education, and prior work experience, so-called vocational factors, in determining disability.

Now, this difficult, I think, disability standard in this important program has unquestionably led to extreme difficulties in administering the program by the Social Security Administration.

Some of these difficulties I think are to be expected given the ambition of the program and the complexities of the standards.

But the problem that we have now and that we have been seeing in this last year, I believe is the result of a deliberate attempt by the Social Security Administration, particularly in the continuing disability investigation cases, termination cases, to simplify and objectify the process for determining disability at the cost of compromising the integrity of the program.

Now, there are a number of general problems that your, I believe excellent piece of legislation addresses that have contributed to the distrust and the confusion of the Social Security Administration's handling of this program. I refer to the aspect of nonacquiescence that has been mentioned and is dealt with in your bill, and also the lack of uniform standards at different levels of administrations which is also addressed in the bill.

I would like to just take a few moments to talk about some specific shortcuts and abuses that I think deserve special attention in the disability cessation process.

COMPETENT SYSTEM FOR EVALUATING DISABILITY IS ESTABLISHED

As a way of background, I think it's important to recognize that the Social Security Administration has established an orderly and I believe quite competent system for evaluating disability known as the sequential evaluation process.

I think it is understandable, and the Social Security Administration is to be commended for attempting to put some order into this process.

This determination process includes five steps in which the first question is asked whether someone is in fact engaging in substantial activity. And the second question is, If one is not, does one have a so-called nonsevere impairment?

If one does have a severe impairment, then the process continues under the Social Security Administration's listing of impairments. It looks to see whether one can perform a prior relevant job, and if not, if one can perform other jobs in the national economy.

Now, what we see happening is the persistent use of selected and limited forms of medical evidence in order to pigeonhole cases into this sequential evaluation process. I would like to mention jut a few of these to show you how the system is operating at this time.

One of these is the excessive use of consulting physicians and nonexamining analysts. You have heard the testimony this afternoon of a number of witnesses who testified about the quality of these social security doctor examinations, as they are known. A 15- or 30-minute cursory review is typical in my experience.

In addition, you made reference to the failure to give proper weight or to seek out the opinions of treating physicians.

And finally, there is the ignoring of a prior record and a prior determination of disability in termination cases.

In addition to this use of selected evidence, limited evidence, the Administration has used restrictive guidelines, often in the forms of the POMS, the program operational manual system that has come into being in the last 6 months or 1 year; some of which set forth artificially limited criteria for establishing whether an impairment is severe or

whether a certain residual functional capacity, which is an important evaluation in the sequential process, exists or does not exist.

Similarly, there is a problem with prohibiting the use of combining impairments. And this is particularly a problem in the instance of the use of the nonsevere standard where someone can have a number of impairments, none of which would meet the criteria of the regulations to be established as a severe impairment, yet the Administration will not allow a claimant to combine those impairments to show a restriction on the ability to work.

FINDING OF NONSEVERE IMPAIRMENT IS EXCESSIVE

I would like to focus on the excessive and improper use of a finding of nonsevere impairment to find that a person is not disabled. Because I believe it is one of the clearest perversions of the statutory standard in the existing administration of the program by the Social Security Administration.

And this is what Mr. Clifton—I guess he took his chart with him. But he was showing you the increased use.

Senator SASSER. I remember the chart.

Dr. BLOCH. What he was showing you there was the increased finding of nonseverity.

Now, in this sequential process of evaluation there are relatively few steps at which a final finding of nondisability can be made as opposed to having to go further into the process.

The main characteristic of a nonsevere impairment finding is that it is based on medical evidence only.

Now, I think we can concede that where the medical evidence shows that there are no limitations on someone's ability to work, then under those conditions, the consideration of age, work experience are probably irrelevant and further development of the claim is unnecessary.

But instead, the regulations and then the POMS implementing these regulations use a very vague significant limitation on work-related activity standards. And as I mentioned before the regulations preclude the combining of impairments to meet this requirement.

So you have circumstances where a claimant can indeed have a limitation on the ability to work, but since it is found not to be significant or since no individual impairment by itself is found to be significantly severe, the evaluation stops and there is no recognition that that particular person, given his or her age, education, and prior work experience, may not be able to work. Now, this is what I call a radical altering of the congressional disability standard, where Congress deliberately put in and recognized that a person's age, education, and prior work experience may limit that person's ability to work in a way different from someone with a different age, education, and prior work experience.

GREATEST PROBLEMS EXIST IN TERMINATION CASES

Now, these problems, in my view, are greatest in termination cases because when you take a review of a case through a very narrow, limited set of standards, you can always find in a narrow, limited way a piece of evidence that can result in a finding of nondisability.

If all the Administration has to do is find a single, isolated piece of evidence which they can find by using a report of a nonexamining analyst or a consulting doctor who only spends 15 or 30 minutes with a patient, all they have to do is use that single, isolated piece of evidence to cancel, eliminate a previous deliberate determination of disability. This can be done in just about any case.

And if at yearend or every 2 years or ever how often the process goes, some one is continually reviewed through these limited sets of standards, in most cases at some point they will be found to be nondisabled, and then will have to go through the whole process again.

Your bill, I believe, will provide at least two important checks to help force a more careful and thorough review of the disability terminnation process. I would like to just mention those, and then I would be happy to answer any questions you may have.

I think I particularly support the idea of a face-to-face termination decision so that the obvious cases can be caught and there can be a necessity of a decisionmaker to justify a finding that can be as absurd as someone who has been receiving disability for 10, 15 years and now all of sudden is told, "You have nothing wrong with you whatsoever, therefore we're going to ignore your vocational limitations."

And the second, and of course most often discussed, is the use of the medical improvement standard. I think the use of the medical improvement standard to require the Social Security Administration to rebut a presumption of continuing disability will force a thorough and sincere evaluation of social security disability recipient's claims and will give them every opportunity to remain on the rolls when they are deserving to do so.

INCAPABLE PEOPLE BEING REMOVED FROM THE ROLLS

Senator SASSER. Thank you very much, Dr. Bloch. In your remarks you indicated that you have noticed a disproportionate number of cases affecting the elderly, poorly educated, unskilled being removed from the disability rolls on the grounds that their impairments are nonsevere; and that in effect the medical and quote vocational factors which are statutorily by law supposed to be taken into account in determining eligibility for disability are being circumvented by this procedure.

Now, could you elaborate on this, please, sir?

Dr. BLOCH. Yes. The Social Security Administration has promulgated, a few years ago, a set of medical vocational guidelines in which the Social Security Administration established for certain classes of persons by age, education, and prior work history, what level of physical disability is necessary for those persons to be rendered disabled or not disabled under the statutory standard.

As it happens, as one would expect, given the realities of the work world, persons who are of an elderly age; beginning at say age 55 onward; those with limited education; those with unskilled work, require a lesser degree of physical disability in order to be found unable to engage in substantial gainful activity.

If you follow through the sequential evaluation process, if it is found that these people have any limitation whatsoever on their ability to work, then the Administration's own guidelines for this elderly set

of relatively uneducated and relatively unskilled workers dictates or mandates that they be found disabled.

So the only way that these people can be found not disabled is to find that they don't have a severe impairment at all. And in my experience and in my estimation, there is a recognition by the Social Security Administration if persons who meet these standards that the Social Security Administration itself has set out, if persons who meet these standards and will be found to be disabled, there is a special effort to put those people out of the process so you never get to the vocational standards.

I think that again with the chart that Mr. Clifton showed, you can see the increase also follows the increased use of these medical vocational guidelines.

Senator SASSER. What you're saying is that these people are being removed from the rolls even though they're incapable of performing substantial gainful activity? And that is the definition of disability.

Dr. BLOCH. Yes, I am.

Senator SASSER. On the basis of age, on the basis of their relative lack of education or lack of experience for other easier vocations—I won't say easier, but less demanding physical occupations or vocations?

Dr. BLOCH. Yes. These are people who given their age, education and prior work experience, those vocational factors, would be under the Social Security Administration's own regulations and under the statutory standards disabled. But the process as it goes now avoids—allows the Administration to avoid even taking these factors into account. And therefore, they are found to be not disabled.

Senator SASSER. Dr. Bloch, in your estimation, what is the biggest problem facing the social security disability system today? That is a big question, I know, and one that probably is difficult to answer. But I would be interested in getting your sort of first-blush reaction to that.

CONFUSION IN GUIDELINES IS BIGGEST PROBLEM

Dr. BLOCH. Well, I think that in a sense the biggest problem facing the Social Security Administration today is the confusion that it itself has created in terms of the guidelines that it uses to administer the program.

As I mentioned before, it did come up with one good idea, and that was the sequential evaluation process where it laid out an orderly method for determining disability.

But then at each of these levels, with the different POMS, with the regulations that conflict with court rulings, with social security rulings of nonacquiescence, with the whole range of contradicting and vague sets of standards, it has unnecessarily confused this program to the point that there is great frustration, as Mr. Brown testified, on behalf of the States that are trying to administer this, and presumably a great deal of wasted effort going into promulgating all these sets of guidelines that don't really make any sense and are not really capable of being used in an efficient way.

Senator SASSER. Dr. Bloch, thank you very much for appearing here today and giving us the benefits of your views. It's been very illuminating and very valuable for us.

Dr. BLOCH. Thank you.

Senator SASSER. Once again, I want to thank all of our witnesses who have appeared here today and contributed their time and energy to the conduct of these hearings.

This testimony has been very helpful in our attempt in Congress to correct what appears to be obvious and I think grievous deficiencies in the current disability review process.

Again, I would like to say to anyone who wishes to submit additional written testimony, you can submit these statements to my Nashville office here in room 569 of the U.S. Courthouse at Eighth and Broad prior to March 31.

And on behalf of the Senate Budget Committee under whose auspises these hearings have been conducted, I hereby adjourn the hearings.

Thank you very much.

[Whereupon, at 5:10 p.m., the committee was adjourned.]

STATEMENT OF DONNA HARKNESS, ATTORNEY, LEGAL SERVICES OF MIDDLE TENNESSEE, INC.

I am an attorney with Legal Services of Middle Tennessee, and have been so employed since August, 1980. Approximately one-third of my caseload is comprised of cases involving appeal of the Social Security Administration's decision to terminate a claimant's entitlement to disability benefits. Therefore, I am grateful for the opportunity to review and comment on the proposed Social Security Disability Benefits Reform Act.

The single most important provision contained within this proposed legislation is the aid paid pending appeal or so-called "continuing benefits" provision. Nothing is more devastating to a disabled individual than the knowledge that he or she will be totally bereft of income two months after having been notified of Social Security's intent to terminate benefits. As a practical matter, disabled individuals are usually already dependent on family and friends to assist them in performing many of the tasks associated with daily living, such as housecleaning and grocery shopping. Often the only shred of dignity that the individual has left comes from the knowledge that they have been productive citizens in the past and have therefore earned the right to continued income now that they are no longer able to produce. Stripped of this source of income, they often come to regard themselves as worthless and as a burden on those that they love. The resulting despair has led to the instances of suicide that have made national news. For those without relatives or other community support, death or extreme deprivation may result simply because the individual is now without the means to pay rent, buy food or seek adequate

medical attention. No matter how well constructed the disability review process becomes, there will always be occasion for human error, and thus there will always be those cases that will be terminated at the initial decision making level even though the individual still continues to be disabled. Althougn such claimants will prevail as a result of the appeal process, the process itself is quite cumbersome and time consuming. By enacting a continuing benefits provision as a permanent part of the continuing disability review process, Congress will have acted to avert the tragic circumstances that have been occurring and will restore some measure of equilibrium for those individuals placed in a position of having to establish again their continuing disability.

The medical improvement standard found in Section 901 of the Bill is long overdue. Basic fairness would seem to prescribe termination of entitlement where the claimant's condition remains as severely disabling as it was when entitlement was first established. The Social Security Administration, however, has not viewed the situation that way, and as a consequence a substantial number of the claimants that I serve have received termination notices which advise them that their entitlement has ceased because their conditions have "not gotten worse." No consideration is given to the fact that the claimant's vocational prospects will have deteriorated during the period of disability, and that the stress of chronic illness may have resulted in psychological problems, such as depression and anxiety. Claimants with bona fide, still existing disabilities are cut off, even though they are as

clearly incapable of performing substantial gainful employment now as they were when benefits were initially awarded. The implementation of a medical improvement standard will reduce the number of erroneous terminations currently being made on this basis.

There may be some problem, however, with interpretation of the two exceptions to the medical improvement requirement. Although the committee's explanation of these provisions makes it fairly clear that the Congressional intent is that these exceptions are to be employed as stringently as possible, it has been the practice of the Social Security Administration in the past to attempt to interpret as broadly as possible any provision that results in denial of benefits. It is hoped, therefore, that the Social Security Administration will not use the medical/vocational advances exception to force a claimant to accept experimental medical treatment. Also it is hoped that the improved diagnostic techniques exception will not be applied to extinguish entitlement retroactively, as the eradication of a period of disability formerly established on the basis of less sophisticated techniques would not only deprive the individual of current benefits but would create an overpayment and might jeopardize the individual's future entitlement with respect to the amount of work quarters he or she would have to acquire in order to be covered. The Congressional intent seems fairly clear that such interpretation would be well outside of what Congress has intended, but should possibly be anticipated based on past practices of the Social Security Administration.

The recommendation that the issue of pain be given further study is a good one, as it is true that there needs to be established a nationwide policy respecting the issue. Although "objective" medical evidence is obviously desirable, current medical technology is simply incapable of providing objective verification of pain in many cases, particularly those involving arthritis and headaches. Often times, a subjective description of pain constitutes the primary clinical tool for diagnosing an ailment, such as ischemic heart disease, particularly in cases where catheterization or treadmill testing may be deemed too risky, and may be the primary disabling factor, at least subjectively, for the claimant. In addition, pain is a very individual matter and the threshhold at which pain becomes intolerable differs markedly among individuals. Any movement toward elimination of consideration of pain as a disabling condition in its own right, whether accompanied by other "objective" symptoms or not, would result in grave injustice to those unfortunate individuals whose experience with physical discomfort has reached disabling proportions but whose condition is not objectively demonstrable.

Part of the feeling of frustration and anger that has been engendered by the roughshod manner in which disability review has been conducted can be traced to the Social Security Administration's arrogant disregard of judicial precedent. The same issues involving proper evaluation of a treating physician's testimony, misuse of the non-severe impairment standard, and refusal to consider a claimant's impairments in combination, to name a few, must be perpetually

relitigated. Those claimants who are persistent enough to continue their fight to the judicial level prevail, but those who are either too ill or too isolated or too exhausted to keep on battling are unjustly terminated from the disability program. By requiring the Social Security Administration to obey the law, Congress will eliminate this disparate treatment of claimants and will help dispel the heartless, overbearing, and bullying image presently projected by Social Security Administration's policies.

In conclusion, this proposed legislation appears to be targeted toward correcting some of the most severe problems that have beset claimants undergoing the continuing disability review process. I thank you again for the opportunity to comment and present written testimony.

○